



Transcript of **Christine S. Meyer, Ph.D.**

Wednesday, March 15, 2023

Lucasys Inc. v. Powerplan, Inc.

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Reference Number: 126477

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION
4

5 LUCASYS INC.,

6 Plaintiff,

7 v.

Civil Action No.

1:20-CV-02987-AT

8 POWERPLAN, INC.,

9 Defendant.

10 _____/

11

12 DEPOSITION OF CHRISTINE S. MEYER, Ph.D

13 DATE: Wednesday, March 15, 2023

14 LOCATION: 3100 Cumberland Boulevard

15 Suite 1470

16 Atlanta, Georgia 30339

17 TIME: 9:00 a.m. - 3:51 p.m.

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21 REPORTED BY: TAMIKA M. BURNETTE, RPR, CSR-2870

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8 EXHIBITS

9 (Exhibits are attached hereto.)

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12 EXHIBIT NO. 1	EXPERT REPORT	5
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1 Monday, March 13, 2023

2 9:00 a.m.

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4 * * *

5 THE VIDEOGRAPHER: Stand by. Good
6 morning, everybody. We are now on the record for the
7 video recorded deposition of Christine S. Meyer, PhD,
8 taken in the matter of Lucasys, Inc. Versus PowerPlan,
9 Inc.

10 Today is March 15, 2023, and the time on
11 the record is now 9:07 a.m. Eastern Standard Time.
12 This deposition is being conducted at Robin, Alloy,
13 Belinfante, Littlefield, LLC in Atlanta, Georgia.

14 My name is Duke Stephens. I'm the
15 videographer. Our court reporter today is Tamika
16 Burnette. We both represent Trustpointe.

17 Will counsel please introduce themselves
18 for the record.

19 MR. FAZIO: Stephen Fazio on behalf of
20 PowerPlan.

21 MR. FRIEDMAN: And Steven Friedman.

22 MR. CIESLAK: Jon Cieslak on behalf of
23 Lucasys.

24 MR. MAYES: Josh Mayes on behalf of
25 Lucasys.

1 MR. ALLOY: Jason Alloy on behalf of
2 Lucasys.

3 (Witness sworn.)

4 CHRISTINE MEYER, Ph.D.,

5 After having been first duly sworn to tell
6 the truth, was examined and testified as
7 follows:

8 EXAMINATION

9 BY MR. FAZIO:

10 Q. Good morning, Dr. Meyer.

11 A. Good morning.

12 Q. My name is Steve Fazio. We met off the record
13 a minute ago.

14 Dr. Meyer, I'm going to hand to you what
15 we'll mark as Exhibit 1.

16 (Exhibit 1 marked for identification.)

17 MR. FAZIO: Do you want a copy of the
18 report or are you good?

19 Q. (By Mr. Fazio) Dr. Meyer, can you identify
20 that for the record for us?

21 A. (Witness examining document.)

22 This appears to be the expert report that I
23 filed in this case.

24 Q. And is that a complete copy of the report?

25 A. As best I can tell, as I sit here today, it

1 appears to be. I'd have to, obviously, go back and tie
2 every page, but it appears to be.

3 Q. And the report that you served in this case,
4 that was served, that you authored in this case, does it
5 taken contain all the opinions you intend to give at
6 trial in this matter?

7 A. Certainly it contains all of the opinions that
8 I have at this point in time. I can't predict the
9 future to know when I might be asked to form other
10 opinions that would be relevant at trial.

11 Q. In terms of the report itself, with respect to
12 the opinions you've given, have you identified the basis
13 for your opinions in your report?

14 A. Yes.

15 Q. And have you identified all of the materials
16 that you've relied on in forming the opinions in your
17 report?

18 A. Yes.

19 Q. Now, I -- a couple of preliminary things before
20 we dive too far into it. I understand, in your report,
21 you're relying on an interview you conducted with Mr.
22 Lantukh?

23 A. Yes.

24 Q. Is that correct?

25 A. Yes.

1 Q. You had just one interview with Mr. Lantukh?

2 A. I spoke with Mr. Lantukh on another occasion,
3 early in the case. But in terms of materials relied
4 upon for this report, yes.

5 Q. Okay. In terms of your earlier conversations
6 with him, approximately, when did that happen?

7 A. To the best of my recollection, shortly after I
8 was retained by -- to the best of my recollection,
9 somewhere in early 2022, but I don't have an exact date.

10 Q. So early 2022, that was approximately when you
11 were retained in this case?

12 A. To the best of my recollections.

13 Q. And do you know -- were you replacing another
14 expert, as far as you know?

15 A. I do not know.

16 Q. So the memo that was produced with your report,
17 is that -- was there any communications that you had
18 within that interview that are not reflected in your
19 memorandum?

20 A. I'm sorry, I don't understand what you mean by
21 that conversation.

22 Q. So the conversation that you rely on in your
23 report, your interview in your report with Mr. Lantukh,
24 correct?

25 A. Correct.

1 Q. That interview, there was a set of notes or a
2 memorandum that you served along with your report --

3 A. (Nodding yes.)

4 Q. To the best of your knowledge, sitting here
5 today, is that memorandum a complete recollection that
6 you took with Mr. Lantukh that you're relying on in this
7 case?

8 A. Insofar as what I'm relying on. So, I mean, I
9 didn't intend for that to be a word for word transcript.

10 Q. Yes.

11 A. But in terms of the interview, insofar as I
12 relied on it, yes.

13 Q. In forming your opinions in this case, are you
14 relying on any personal communications you had with
15 anyone?

16 A. No.

17 Q. Have you had any communications with Mr. Chang,
18 Mr. Strang or Mr. Saint James or any other Lucasys'
19 employees?

20 A. Not to the best of my recollection. If they
21 were on a phone call that I wasn't aware of the person
22 being on -- obviously, these days, with Zoom and such,
23 but no, not to the best of my recollection.

24 Q. And just to be clear, what I'm asking -- what
25 I'm asking you -- I'm asking you in your role as the

1 leader of the team at NERA, okay -- so was there someone
2 else at your team that may have interviewed those folks?

3 A. Not that I recall, as I sit here today.

4 Q. All right. Do you know if you or anyone on
5 your team has had any communications with any PowerPlan
6 employees?

7 A. Not that I'm aware of. No.

8 Q. Have you or anyone on your team have any
9 communications with any PowerPlan customers?

10 A. Not that I'm aware of, as I sit here today.

11 Q. Have you or anyone on your team had any
12 communications with any Lucasys' customers?

13 A. Not that I'm aware of, as I sit here today.

14 Q. Have you or any one of your team had any
15 communications with any other providers of Tax
16 Consulting Services, RCC, Double A, R2, folks like that?

17 A. Not to the best of my knowledge. No.

18 Q. Okay. With your work on this case, have you
19 had any type of communication with any type of software
20 provider?

21 A. I'm not sure what you mean. Not that is
22 relevant to this case. No.

23 Q. And when you say "not that you're aware of," is
24 there anybody -- is there any reason you would be
25 unaware of those kinds of communications occurring?

1 A. No. But I mean, you're asking me about
2 somebody else. You know, I don't keep tabs of
3 everybody, 24 hours of the day. So I just want it to be
4 clear that it's to the best of my knowledge, as leader
5 of the team, as you said. But that's all I can testify
6 to.

7 Q. In you forming your opinions you're going to be
8 giving at the trial in this case, you're not going to be
9 relying on those kinds of communications?

10 A. When you say "those kinds of communications," I
11 take it that you mean communications that I am --

12 Q. The --

13 A. Anything other than the interview that I cited
14 in my report?

15 Q. Correct.

16 A. That's correct.

17 Q. In forming your opinions in this case, have you
18 relied on any information that you learned exclusively
19 from counsel?

20 A. Not that I'm aware of, as I sit here today.
21 I'd have to go through -- I certainly have developed
22 certain understandings from counsel. I would have to
23 think, for each one, whether there was an additional
24 source or not. For example, legal understandings, those
25 would likely have come just from counsel.

1 Q. In any case, if -- to the extent you were
2 relying on that, would you have referred to it in your
3 report? You would have cited it if that had been the
4 case?

5 A. Generally speaking, in my reports, when I have
6 received, for example, by way of example, legal
7 understandings from counsel, I would -- I would denote
8 that as I understand something.

9 Q. Okay.

10 A. I wouldn't necessarily -- when I say "cite," I
11 take that to mean a footnote. I wouldn't necessarily
12 drop/add footnotes, but I would have indicated it.

13 Q. Now your charges are 850 an hour for your time?

14 A. Correct.

15 Q. How many hours have you personally spent
16 working on this case to this point?

17 A. I don't know as I sit here today.

18 Q. Can you estimate for me?

19 A. I cannot.

20 Q. Do you know how much you have billed in this
21 case so far?

22 A. I do not.

23 Q. You're responsible for sending out the bills?

24 A. I am.

25 Q. All right.

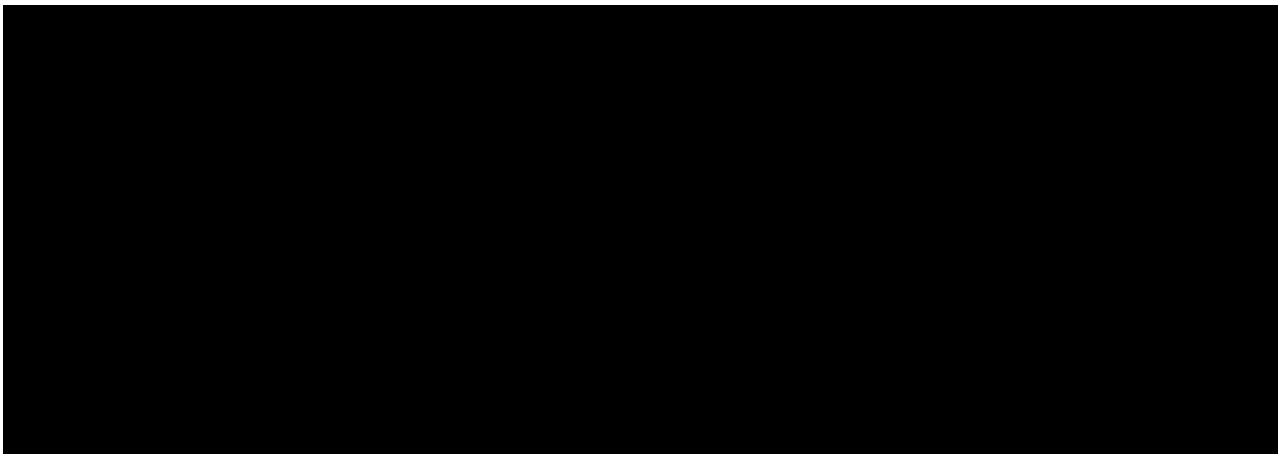
1 A. Well, my accounting department does. I have --

2 Q. And you've been reviewing the bills?

3 A. I have.

4 Q. Well, can you give me an estimate how much it
5 is?

6 A. No.



13 Q. Okay. I think you said earlier that you were
14 retained in 2022; is that correct?

15 A. To the best of my recollection, I would call it
16 being around the time of the change of the year. So
17 whether it was late in 2021 or early in 2022, I don't
18 remember exactly. It was during that time frame, to the
19 best of my recollection, as I sit here today.

20 Q. Now if you look towards the back of your --
21 your report, there's an Exhibit 2 --

22 A. (Witness complying.)

23 Q. -- right immediately following your CV. Do you
24 have that in front of you?

25 A. Yes.

1 Q. And so this says materials relied upon by
2 Christine S. Myer, PhD. So I just want to understand
3 the materials that you list here. These are things that
4 you're relying on in your opinions.

5 Did you have access -- what other materials
6 did you have access to in this case?

7 A. My team had access to a database of materials
8 that I understand -- a database of materials produced in
9 this case.

10 Q. And your understanding is it was all the
11 materials that were produced in this case?

12 A. That's my understanding.

13 Q. How many people were on your team working on
14 this case at NERA?

15 A. The primary team, in addition to myself, was
16 four individuals. There may have been other individuals
17 that worked on -- there were other individuals who
18 worked on some footnotes or smaller parts of the case,
19 but the core team was four individuals.

20 Q. And who were those individuals?

21 A. Those were Dr. Scalf, Dr. Lantukh, Dr. Camonie
22 and Ms. Wonvel.

23 Q. I'm sorry who was the first, Dr. --

24 A. Scalf.

25 Q. S-C-A-L-F?

1 A. Yes.

2 Q. And what was Dr. Scalf's role on the team?

3 A. Dr. Scalf's role was to assist me on primarily
4 -- with the writing of the report, and -- yes, to assist
5 me into formulating the arguments and writing the report
6 itself.

7 Q. And the other two you mentioned, what were
8 their roles?

9 A. I believe I had mentioned three others.

10 Q. Okay. Three others?

11 A. Mr. Lantukh discovery was primarily responsible
12 for the interface with counsel in terms of documents and
13 setting up various -- with setting up, for example, the
14 interview that we will talk about or any other
15 communications with counsel. He was primarily
16 responsible for overseeing the work of the researchers
17 of the other two individuals that I was talking about,
18 and also assisted me with the writing of the report.

19 The other two individuals, I would call
20 reservers, as narrative. They were responsible for
21 actually going through, for example, the first sweep of
22 documents that we received, bringing those to my
23 attention, to Dr. O'Cotection, to Dr. Scalf's attention.
24 They were responsible for actually writing the footnotes
25 in the report and checking the report, putting it

1 together, for example, Exhibit 2 that we mentioned, and
2 things of that nature.

3 Q. To your knowledge, did you -- did your team
4 have access to any Lucasys documents that were not
5 produced in this case?

6 A. Not to the best of my knowledge. No.

7 Q. Have you reviewed any additional documents
8 since issuing your report in this case?

9 A. Yes.

10 Q. What documents have you reviewed?

11 A. I've reviewed the expert report of Mr. Tyler.
12 That's what comes to mind as I sit here today.

13 Q. What did you do to prepare for today's
14 deposition?

15 A. I met with counsel. I reviewed my report and
16 that of Mr. Tyler. I reviewed -- well, I should say I
17 spoke with members of my team. That's what comes to
18 mind as I sit here today.

19 Q. How -- when did you meet with counsel?

20 A. I met with counsel yesterday and a few -- maybe
21 about two weeks ago. I don't remember the exact date.

22 Q. And when you met two weeks ago, about how long
23 did you spend preparing for your depo?

24 A. My recollection is I spent a better part of
25 that day preparing for my deposition, reviewing

1 materials. I don't recall exactly how long I was with
2 counsel and how much was on my own.

3 Q. And yesterday, how long did you meet?

4 A. For approximately an hour, an hour and a half.

5 Q. And your meeting yesterday, did you look at any
6 documents?

7 A. Not -- I believe I had looked at my report, but
8 other than that, not that I can recall.

9 Q. Dr. Meyer, you, in your report, define two
10 separate markets in this case, true?

11 A. Correct.

12 Q. Okay. And you define a tax depreciation and
13 deferred tax software market?

14 A. Correct.

15 Q. And a tax depreciation and deferred tax
16 services market, correct?

17 A. Correct.

18 Q. Just to be consistent with your reporting,
19 we'll refer to those today, in shorthand, as the tax
20 market and the tax services market, do you understand?

21 A. Yes.

22 Q. And you identified PowerTax as a software; is
23 that true?

24 A. Correct.

25 Q. When you say "PowerTax," what specifically are

1 you referring to?

2 A. As I mentioned in my report, I'm specifically
3 referring to the tax depreciation knowledge and the
4 deferred tax module tax.

5 Q. You understand that PowerPlan sold many, many
6 different software modules, correct?

7 A. Yes.

8 Q. Did you do anything to analyze that as part of
9 your work in this case?

10 MR. CIESLAK: Objection. Vague.

11 THE WITNESS: I'm not sure what you mean by
12 analyze. I certainly was aware of them. But in terms
13 of the specific relevant tax market that I have
14 determined, they were not part of that particular
15 relevant interest market.

16 Q. (By Mr. Fazio) Okay. But explain to me, then,
17 how -- when you were determining -- well, actually,
18 strike that. We'll come back to it.

19 So other than PowerPlan/PowerTax deferred
20 accounting and PowerTax U.S. tax depreciation, those are
21 the only tax software markets, correct?

22 A. Insofar as products sold by PowerPlan, those
23 are the -- those are the modules that provides
24 functionality. Yes. That's all within my interest
25 market.

1 Q. Okay. And have you -- and are you aware of
2 PowerPlan tax asset products?

3 A. I can't recall that particular name, but I
4 understand that the depreciation at issue is
5 depreciation of fixed assets.

6 Q. So in your work in this case, you didn't
7 consider whether PowerPlan's tax asset products should
8 also be in your tax software market?

9 A. I certainly considered which products were
10 necessary for the functionality that allows a company to
11 -- to -- an IOU in particular, investor-owned utility,
12 to be able to do the tax -- to be able to get the tax
13 deferred, functionally that it requires, and my
14 understanding is that it's the two modules that I refer
15 to.

16 Q. Okay. Do you know what tax PowerPlan's
17 tax-fixed -- sorry. Strike that.

18 Do you know what functionality PowerPlan's
19 tax-fixed assets modules provides?

20 A. I don't have a specific understanding of that,
21 no.

22 Q. So sitting here today, you don't know if it
23 would be in your tax software market or out of your tax
24 software?

25 MR. CIESLAK: Objection. Misstates

1 testimony.

2 THE WITNESS: As I said in an answer to one
3 of your previous questions, my understanding is that the
4 functionality required by investor-owned utilities for
5 the deferred tax requirements, that that functionality
6 resides within PowerPlan's products in the two modules
7 that I'd mentioned.

8 Q. (By Mr. Fazio) Is any Lucasys software product
9 included in your proposed tax software market?

10 A. My understanding is that Lucasys was attempting
11 to develop and was developing products in that -- in
12 that space, but has been reported by PowerPlan. I
13 don't have a particular specific product offering that's
14 in that space.

15 Q. Do you know if today, as we sit here today,
16 Lucasys has a product that would be capable of replacing
17 PowerTax at an industrial-owned utility?

18 A. When you say, "replacing PowerTax," my
19 understanding that Lucasys was looking first to enter
20 the space of the deferred tax functionality. I'm not
21 aware that they have -- that Lucasys has a products
22 that's currently on the market to replace all of
23 PowerTax.

24 Q. And again , just so we're clear, when you're
25 talking about PowerTax, you're talking about the U.S.

1 tax depreciation module and the deferred accounting
2 module? That's specifically what you're talking about?

3 A. In my answer to your last question, I was --
4 you had used to term PowerTax generally.

5 Q. Okay.

6 A. So I was using the term "PowerTax" in a general
7 sense in my answer to your previous question.

8 Q. I guess my question to you is: When I use that
9 term, what does that term mean to you?

10 A. I think it depends on exactly what the context
11 is that you use that term. If you'd like me to use it
12 to refer to the tax depreciation and tax deferred
13 software, I certainly can do that.

14 Q. Let please assume for the purposes of our
15 deposition today that if I use the term "PowerTax," I'm
16 preferring to those two specific modules; is that fair?

17 A. Yes.

18 Q. So going back to the question about Lucasys.
19 So there is -- as you sit here today, you don't know --
20 well, strike that.

21 As you sit here today, does Lucasys have a
22 product that's capable of replacing PowerTax in
23 investor-owned utility?

24 A. And again , my understanding is that Lucasys is
25 -- that that's a -- first of all, an area that Lucasys

1 is looking to get into. It's -- it has offerings that
2 are -- can address some of that functionality. Whether
3 or not that that rises to the level of having a product
4 available, I don't have an understanding, as I sit here
5 today, but my understanding is that that's the
6 development that they're looking to and have been
7 looking to undertake.

8 Q. So in your analysis of the market, you did not
9 consider any Lucasys products to be a close substitute
10 for PowerTax; is that fair?

11 A. My understanding is that the development
12 process in this space is one of -- and then I mentioned
13 this in any report -- of development with a customer,
14 and so that is a space that Lucasys has been looking to
15 get into, has begun to develop into, but was thwarted
16 from being able to fully enter that market, you know, in
17 such a way that I would characterize them as having a
18 product in that market.

19 Q. So my question to you was whether you
20 considered any Lucasys software product a close
21 substitute for the purposes of your market analysis. So
22 can you answer that question for me?

23 A. And I think I have answered that question. My
24 understanding is that there -- that Lucasys has been
25 developing products in that space and that the

1 development process is an ongoing process and is a
2 process that, as I said, they've been thwarted. I don't
3 have a specific understanding of -- a marketed product
4 in the same way that a PowerTax product is marketed, but
5 rather that it's an ongoing development.

6 Q. So -- we'll come back to this. So in your
7 analysis in this case, do you consider the tax software
8 market to currently be a one-product market?

9 A. My understanding is that PowerTax has, as I had
10 mentioned in my report, somewhere between 85 percent or
11 higher market share in that market indicating other
12 products as well.

13 Q. And what are those other products?

14 A. As I have indicated in my report, they're -- my
15 understanding is that there are investor-owned utilities
16 that can use other software products, whether those be
17 homegrown products or whether those be products from,
18 for example, an SAP to provide some of that
19 functionality, but that for most of the -- the IOUs,
20 PowerTax is the preferred option for them.

21 Q. Setting aside whether there is a preference for
22 PowerTax for not, are there this software products --
23 and it's your opinion that -- do you have an opinion as
24 to whether or not there are any other software products
25 that are close substitutes to PowerTax that are

1 available on the market today?

2 MR. CIESLAK: Objection. Vague.

3 THE WITNESS: In terms of -- in terms of
4 providing the functionality that most investor-owned
5 utilities require, my understanding is that there are
6 not other close substitutes to PowerTax.

7 Q. (By Mr. Fazio) And so this 15 percent of the
8 market that isn't serviced by PowerPlan -- well, strike
9 that.

10 Dr. Meyer, do you agree that PowerPlan's
11 tax depreciation and deferred tax modules perform
12 different functions?

13 A. My understanding is that that's correct.

14 Q. And can we agree that the deferred tax module
15 and the tax depreciation module, PowerPlan's, are not
16 substitutes for one another, true?

17 A. I don't understand -- I understand them not to
18 be substitute, rather to be working in compliment for
19 these functionalities.

20 Q. And the two modules we're talking about, you
21 understand that they can be separately licensed?

22 A. That's my understanding, yes.

23 Q. Did you investigate any of the differences in
24 pricing between the modules?

25 A. Not that I can recall, no.

1 Q. Did you investigate if there were any
2 differences in the customer base for these modules?

3 A. Yes.

4 Q. And what did you do to investigate them?

5 A. I understand that there are customers who only
6 need the tax depreciation functionality and not the
7 deferred tax functionality.

8 Q. And who are those -- what type of customer
9 would that be?

10 A. I -- sitting here today, I can't recall
11 specifically what type of customer that would be, but I
12 recall that being an attribute of those particular
13 products.

14 Q. And why -- why was it that you thought it was
15 worthy of investigating whether there were differences
16 in the customer basis between the two modules?

17 A. My focus was on starting from the deferred tax
18 software module, and my understanding was -- that I
19 developed was that the full functionality, in order to
20 be able to provide the deferred tax calculations, that
21 it was also necessary to -- to have the depreciation
22 module, that -- that there was an interconnectedness
23 between those two modules for IOUs that required the
24 deferred tax functionality, and so I wanted to
25 understand generally about those two modules.

1 Q. And we touched on this earlier, but I wanted to
2 see if we can clear it up. When you were investigating
3 the interdependencies between those modules, did you
4 look at any other PowerPlan modules to see if they were
5 also necessary in your performance of the tax
6 depreciation and deferred tax functionality?

7 A. Not to the best of my recollection, no.

8 Q. In your work in this case, did you consider any
9 other potential software market definitions than the one
10 you landed on?

11 A. I recall -- not that I can recall, no.

12 Q. You've read the complaint in this case?

13 A. Yes.

14 Q. And you've seen the first amended complaint in
15 the case?

16 A. Yes.

17 Q. Okay. And do you have an understanding as to
18 whether there are market definitions included in the
19 complaint itself?

20 A. To the best of my recollection, there were,
21 yes.

22 Q. Okay. And do you have an understanding as to
23 how those definitions and the definitions you use in
24 your report are different?

25 A. I don't recall that language with enough

1 specificity to be able to answer that.

2 Q. Did you -- do you recall rejecting the
3 definitions that were used in the complaint, in the
4 first amended complaint, in your work?

5 MR. CIESLAK: Objection. Lacks foundation.

6 THE WITNESS: Again, I've done my own
7 analysis of the relevant markets. I just don't have
8 enough recollection of the specificity of what was
9 mentioned in the complaint. As I sit here today, I
10 certainly reviewed it. I don't have that at my
11 fingertips to be able to answer.

12 Q. (By Mr. Fazio) Dr. Meyer, in your tax software
13 market definition, is it limited to investor-owned
14 utilities?

15 A. My understanding is that the deferred tax
16 functionality is specific to investor-owned utilities,
17 yes.

18 Q. So your market definition is limited to
19 investor-owned utilities?

20 A. (Witness examining document.)

21 Q. Feel free to look at your --

22 A. Yes.

23 Q. And do you include all types of investor-owned
24 utilities in your market definition, including -- so
25 electric, water, gas?

1 A. In terms of types of investor-owned utilities,
2 yes, it includes, as you said, water, electric, gas,
3 yes.

4 Q. So if we have a non-investor-owned utility that
5 is a PowerTax customer, are they in your market or out
6 of your market?

7 A. The product market definition refers to the
8 specific product. My understanding is -- and as I said,
9 specifically that deferred tax functionality. To the
10 extent that there might be a customer that falls outside
11 of the space of investor-owned utilities, that's not the
12 -- the space that I'm looking at from -- for purposes of
13 relevant market in this particular matter.

14 Q. Well, if you have a customer that's purchasing
15 the PowerTax products, I mean both modules, what would
16 -- what's the economic rational for excluding them from
17 your market definition?

18 A. The relevant market exercise is -- is a demand
19 side exercise specifically for the questions at issues
20 here, and the questions at issue in this case is the
21 exclusion or potential exclusion or thwarting or
22 hindering of the competition, specifically as alleged by
23 Lucasys. Lucasys was looking to get into the deferred
24 tax base specifically as related to investor-owned
25 utilities. So that's the -- that's the particular space

1 that's relevant to analysis here.

2 Q. So in your -- as an economist, you're defining
3 the market based on the allegations in the complaint.

4 Is that's what happening?

5 MR. CIESLAK: Objection. Misstates
6 testimony.

7 THE WITNESS: I wouldn't characterize it in
8 that way. The relevant market is the one relevant to
9 understanding competition in the market relevant to the
10 analysis. The relevant analysis here certainly is the
11 allegations in the complaint, but then the question is
12 around that, what are -- from a demand side perspective,
13 what are the relevant customers demanding.

14 Q. (By Mr. Fazio) And if a non-IOU was demanding
15 PowerTax, they would be able -- they're a potential
16 customer in that market, true?

17 A. I agree that they're certainly a potential
18 customer for the tax deferred and tax depreciation
19 software modules. I understand that to the extent that
20 non-IOU customers purchase those products, that would be
21 a relatively small number of customers.

22 Q. But in your work in this case, you haven't
23 analyzed that question whether there are the -- the
24 extent to which there are non-IOUs that are either
25 customers or potential customers of PowerTax?

1 A. That was not my focus in this case. That was
2 not my focus.

3 Q. So you didn't do it or you did do it?

4 A. I generally recall learning that there might
5 public a small number of customers on the deferred tax
6 side that are non-IOUs, but that the -- the majority of
7 the customers both from the standpoint of PowerPlan for
8 those modules and also if Lucasys is looking to get into
9 that is IOUs.

10 Q. So your work on this case, did you
11 independently evaluate or attempt to quantify
12 PowerPlan's market share in the IOU space for PowerTax?

13 A. I did not -- I looked at all the information
14 available and numerous characterizations in that market.
15 I did not do a separate assessment of market share,
16 other than those.

17 Q. Let's turn to paragraph 27 of your -- let me
18 orient you a little bit here. So this is your -- your
19 discussion -- this is section B of your report, which
20 starts at Page 11, which talks about the product
21 markets, and you have section one here that talks about
22 the tax software market, and then you go through a
23 number of other potential substitutes, and you reach
24 conclusions on them. Do you see that? It starts on
25 Page 11 and then goes through Page 20 and the top of 21.

1 A. Yes. I see what you're look at.

2 Q. Okay. So I just want to orient you to
3 paragraph 27 where you say -- the heading here is
4 "Industry-Agnostic Tax Systems Are Not Close Substitutes
5 to Tax Software." Do you see that?

6 A. Yes.

7 Q. And then you went through and you identified a
8 number of software providers, and you talk about whether
9 they are close substitutes or not, various bullet
10 points. Do you see that?

11 A. Yes.

12 Q. First of all, I wanted to ask you, how did you
13 come up with this list of other potential substitutes
14 for PowerTax software?

15 A. As I note in footnote 52, I believe it is,
16 these are some potential customers that were mentioned
17 by a consulting company for PowerPlan, and I mention the
18 specific Bates numbers down below.

19 Q. You're referring to -- footnote -- you said
20 footnote 52?

21 A. Correct.

22 Q. Did you do anything to independently determine
23 what software may be a close substitute for PowerTax in
24 your work on this case?

25 A. I'm not sure by what you mean "independently."

1 Certainly I looked at any potential substitutes that
2 were mentioned by PowerTax. I discussed how I -- how I
3 do that or how PowerPlan, I should say, including
4 various profiles of companies that were -- were
5 mentioned. I discuss all of what I did. Other than
6 what I mention in my report, I don't have anything else,
7 bit did a comprehensive analysis based on all of the
8 potential competitive products that I saw and mentioned
9 in various documents and in various other sources.

10 Q. I --

11 A. Including depositions, for example.

12 Q. Excuse me, I didn't mean to interrupt you. So
13 these products, as I look at the footnotes, you're
14 referring to a number of profiles that were prepared by
15 a marketing research and consulting group from
16 PowerPlan. If you look at footnote 53 and 56. We can
17 go through all of them if you like. And I note that
18 they're all dated December 2017. Do you see that?

19 A. I see a number of dates of December 2017, yes.

20 Q. Footnote 53, 56, 58, 60, 61, those all refer to
21 the same December 2017 date, right?

22 A. (Witness examining document.) Certainly some
23 of them do, yes. Some of them I don't see a date on.

24 Q. Okay.

25 A. Some of them do, yes.

1 Q. Well, with respect to the ones where you're
2 citing to these competitive profiles that are dated
3 December 2017, do you go and do anything to actually
4 verify whether or not those competitive summaries or
5 competitive profiles were still accurate as of today or
6 as of the time you're doing your report?

7 A. (Witness examining document.) As I note, you
8 know, some of the sources have a date of December 2017,
9 but I have additional sources as well. I'd have to go
10 back, and I don't have all of the dates at my
11 fingertips.

12 Q. Well, let me make the question a little easier
13 for you. Did you ever -- with respect to any of the
14 companies that are listed here, did you or anyone on
15 your team ever go back and determine whether or not the
16 descriptions from the materials that you're citing were
17 still accurate as of the time you were preparing your
18 report?

19 A. I don't recall going back specifically with
20 regards to checking specific language in competitive
21 profiles. I note, for example, however, that there's
22 other information. For example, going further in that
23 same section in my report, deposition testimony, for
24 example, by several customers that corroborate the lack
25 of close substitutes. So if you're asking me

1 specifically did I, you know, check a particular wording
2 in a document, that document speaks for itself, but I
3 did corroborate the overall conclusion with deposition
4 testimony by customers and the other information that's
5 in my report.

6 Q. So you didn't go out or no one on your team
7 went out and actually looked at these particular
8 software offerings and determined whether they had the
9 features or functions of the PowerTax products as of
10 2022 when you issued your report?

11 A. Again, if you're asking me, you know, for
12 ticking and time a certain wording in a -- in a
13 document, I took that document on its face for what it
14 was. However -- and to the extent that it was in 2017,
15 I note that I have other sources that are after that
16 date. However, several industry participants,
17 particularly customers, were asked at a much later point
18 in time for their assessment of the market and the
19 competitors, and that is consistent with the same basic
20 conclusion of no close substitutes for PowerTax.

21 Q. Okay. So the question -- or the answer to the
22 question that I asked you is no, you didn't go out and
23 check to see if any of those pieces of software had the
24 features or functions such that they could be a close
25 substitute for PowerTax; is that accurate?

1 A. Again, and you're asking me about doing a
2 particular analysis in one way, and I agree that I
3 didn't do a particular piece of analysis in a particular
4 way, but that doesn't mean that the analysis wasn't done
5 in a different way, and that's what I just wanted to
6 clarify. I -- in looking at what industry different
7 participants are saying at much later points in time,
8 that's a -- a corroboration of the general point of lack
9 of close substitutes.

10 Q. Switch gears for a minute and talk about your
11 proposed services market. So just for a second to
12 orient you, your -- this is paragraph 39. You say that
13 the tax services market includes services designed and
14 used to overcome the limitation of PowerTax. Do you see
15 that?

16 A. Yes.

17 Q. Okay. And then you go on to identify specific
18 limitations in paragraphs 40 and 41?

19 A. (Witness examining document.) That's correct.

20 Q. Is it fair to say that these are the alleged
21 limitations that define the scope of your services
22 market?

23 MR. CIESLAK: Objection. Vague.

24 THE WITNESS: I would not characterize
25 these as limitations of my tax services market. I would

1 -- I would view these as examples of the types of
2 limitations that the tax services providers provide to
3 customers.

4 Q. (By Mr. Fazio) Okay. Doctor, so help me you
5 were circumstantial then. In your own words, tell me
6 what is the -- what is the tax services market. How do
7 I -- how do I define the tax services market?

8 A. So as I stated in my report, my understanding
9 is that PowerTax has some limitations. Some of them are
10 enumerated here, but they could -- my understanding is
11 that they could also be specific for a particular
12 customer, that each customer may need a custom set of
13 services in order to overcome the limitations that they,
14 you know, require assistance with, and that's one of the
15 things that Lucasys and some of the other providers
16 provide. These are -- these are examples that I
17 mentioned in this section.

18 Q. Well, give me some more examples. Help me
19 understand what the limitations are of PowerTax are that
20 you're referring to here.

21 A. Again, I've laid out some limitations as I
22 understand stand them. For example, the TCJA. The way
23 that PowerTax was not able to account for those
24 particular limitations, and the others that I -- I don't
25 have anything to add besides what I have written in this

1 section.

2 Q. Okay. You mentioned that a particular customer
3 may need some custom development. Did you say that a
4 minute ago?

5 A. While I don't disagree that that may be the
6 case, my statement a minute ago was about the
7 limitations and the limitations that are important to
8 particular customers may also be specific to that
9 customer.

10 Q. And when you -- you keep using the term
11 "limitation." I think that's where I'm struggling. I'm
12 trying to understand how I know whether something is a
13 limit -- how would a court or the factfinder know that
14 something is a limitation of software versus some other
15 thing that requires outside services that implicated
16 PowerTax?

17 A. I'm not sure I understand your question.

18 Q. So if I -- if a -- for example, if Lucasys is
19 hired to do an upgrade of PowerTax module, is that a
20 limitation of the PowerTax module or is that something
21 different, in your view?

22 A. If there is a -- improvements needed to the
23 PowerTax module to -- in order to fulfill the
24 requirements of the customer with regard to its deferred
25 tax and requirements, then at least as I sit here today,

1 I'd have to think about that question some more and then
2 have a particular example in mind to think about, but I
3 believe that would fall within the category of the tax
4 services, as health as I'm sitting here today, but that
5 would be something I would want to think some more about
6 in exactly the way you described it.

7 Q. Well, let goes back to back paragraphs 40 and
8 41 for a second. Have you done anything to
9 independently confirm whether the alleged limitations
10 that you list here actually exist in the PowerTax
11 software?

12 A. I'm not sure what you mean by independent
13 verification. I don't, myself -- I'm not an
14 investor-owned utility, so I don't use the PowerTax
15 software myself as an investor-owned utility. So I have
16 relied here on industry participants to -- to describe
17 what the limitations of the software -- what some of the
18 limitations of the software are.

19 Q. Well, you're talking in paragraph 40 about --
20 you cite to three things: an IRS private letter ruling,
21 and then you cite to two Lucasys documents and your
22 interview with Mr. Lantukh. So it's fair to say that at
23 least with respect to the two sentences in paragraph 40,
24 you were taking -- you were relying on Lucasys for that
25 information?

1 A. I agree that I was relying on Lucasys document
2 in the interview for these particular sentences, yes.

3 Q. And you haven't done anything aside from that
4 to determine whether those statements are factually
5 accurate?

6 A. With regards to those two particular sentences,
7 I relied on what I relied on. I agree.

8 Q. And that was Lucasys, correct?

9 A. Again, I'd have to go back and look at the
10 document that was cited in 89 -- sorry, footnotes 89 and
11 90 that certainly comes from Lucasys file. I don't have
12 a photographic memory of what those are.

13 Q. And let's talk about the issues in
14 paragraph 41. I mean, the same issue there, right? If
15 you look at the footnotes, for each of those footnotes,
16 for three of the four -- four of the four of them, you
17 refer to a Lucasys document, the same document. In one
18 of them, you also cite to Lucasys's website. Do you
19 know that?

20 A. (Witness examining document.) I'm sorry, which
21 footnotes are you referring to again?

22 Q. The -- each of the footnotes that relate to
23 paragraph 41, so it's footnote 91 through 94 on Page 22,
24 Exhibit 1.

25 A. Again, I don't have a photographic memory of

1 that document. I would have to go back and look at what
2 document that is. It certainly comes from Lucasys's
3 files. I agree with that.

4 Q. And aside from the this document that you got
5 from Lucasys's files, neither you or anyone on here
6 actually confirmed that any of the items that are listed
7 in bullet point form in paragraph 44 are actual
8 limitations of the software?

9 A. Again, as I said before, I'm not an
10 investor-owned utility. I rely, as I usually do, on
11 participants in that market.

12 Q. Okay. And so if it turns out that the document
13 that's cited there is actually just a Lucasys marketing
14 document, is it going to change your opinion about
15 whether any of these things are actual limitations or
16 not with the PowerTax software?

17 MR. CIESLAK: Objection. Incomplete
18 hypothetical.

19 THE WITNESS: I don't understand. I'm
20 sorry. Can you repeat your question? Maybe I didn't
21 hear.

22 Q. (By Mr. Fazio) Assume for a second that the
23 document that's being cited, so footnotes 91 through 94
24 where each one of them refers to Lucasys RPD
25 01177753-755. Do you see that?

1 A. Yes.

2 Q. Okay. If that turns out to be an internal
3 marketing document or an internal document that's
4 authored by Lucasys, would that change your opinion as
5 to whether any of the items you've identified in
6 paragraph 41 are actually limitations of the PowerTax
7 software?

8 MR. CIESLAK: Same objection.

9 THE WITNESS: I don't see how that would
10 change my -- my understanding that according to market
11 participants, including Lucasys, that is -- that is
12 retained -- that is hired by firms to -- to actually
13 provide these services, they would be there the position
14 to know what adjustments customers are asking them to
15 perform with regards to services to -- to address
16 limitations of the PowerTax product.

17 Q. (By Mr. Fazio) Well, Dr. Meyer, I'm trying to
18 understand. You keep saying it's a limitation. I'm
19 asking you to tell me whether your opinion would change
20 as to whether these are actual limitations if the only
21 source for this information was Lucasys?

22 MR. CIESLAK: Same objection.

23 THE WITNESS: And again, my answer is no
24 for the reason that I stated before.

25 Q. (By Mr. Fazio) When you were forming your

1 opinions in this case, did you do -- when you were
2 getting information from Lucasys, did you do anything to
3 additionally verify that information?

4 A. I looked at, as is indicated by the footnotes
5 to my report and Exhibit 2, a great deal of other work
6 and analysis, other than what I -- any information that
7 I received, for example, from an interview from a
8 Lucasys individual.

9 Q. And with respect to criticisms of PowerPlan,
10 could we agree that Lucasys as a competitor or potential
11 competitor to PowerPlan as an incentive to suggest
12 infirmities in the PowerTax products?

13 A. I don't have a particular opinion on that one
14 way or the other.

15 Q. In -- when you were considering this additional
16 market definition of tax services, have you considered
17 how the PowerTax software has changed over time?

18 A. I'm certainly aware, in general, of -- of dates
19 to the PowerTax product, yes.

20 Q. Can you tell me about what some of them have
21 been?

22 A. I don't have a specific listing of those in my
23 mind, as I sit here today.

24 Q. You understand that different customers use
25 different versions of PowerTax, correct?

1 A. I don't understand what you mean by "versions."
2 If you're talking about sort of upgrades over time, by
3 versions, I understand that to be the case, yes.

4 Q. Do you have any idea of how many different
5 versions of the PowerTax software are in use at a
6 customer today?

7 A. Not off the top of my head, no.

8 Q. Is that something that you looked at when you
9 were forming your opinions in this case?

10 A. It certainly may have been in some of the
11 documents that I've reviewed, but nothing comes to mind,
12 as I sit here today.

13 Q. So is the scope of the tax services market
14 different for different customers?

15 A. I don't understand what you mean by that
16 question.

17 Q. So for example, if a customer -- if you have
18 customers with older versions of the software and some
19 customers with the newest version of the software, where
20 their need for services be different?

21 A. As I stated in an answer to your earlier
22 question, my understanding is that the particular
23 services required by a particular customers would be
24 specific to that customer, which could include the
25 version of the software, but also the particular needs

1 of that customer.

2 Q. So if there was an upgraded -- an upgrade to
3 the software that was available that addressed the
4 concern or the need that the customer -- the customer
5 had, the customer could choose to either deploy services
6 or implement an upgrade; is that true?

7 A. I don't know the answer to that question for
8 any -- for any particular possible limitations and/or
9 upgrade.

10 Q. Okay. Well, let's please assume for a second
11 that the specific problem for the specific issue that
12 the customer wants address is if they upgrade to the
13 newer version of the software, it would take care of
14 that issue for them. Are you with me?

15 A. Yes.

16 Q. And so in that scenario, the customer could
17 choose either to deploy resources to the services or
18 they could deploy resources to an upgrade, true?

19 MR. CIESLAK: Objection. Incomplete
20 hypothetical.

21 THE WITNESS: Again, you seem to be asking
22 me sort of a totality, if that upgrade completely
23 fulfills the customer's wishes at a -- and of course,
24 pricing and other things are also important and, you
25 know, taking into account all the other capabilities of

1 the customer, including hardware that they have and et
2 cetera. If, in fact, that's possible, then, you know, I
3 don't have a technical reason, as I sit here today, to
4 know one way or the other whether that would be possible
5 for a particular customer or not.

6 Q. (By Mr. Fazio) Well, from an economic
7 perspective, in that scenario, a software upgrade would
8 be a substitute for services in the services market,
9 wouldn't it?

10 MR. CIESLAK: Objection. Incomplete
11 hypothetical.

12 THE WITNESS: Again, as I just stated, my
13 understanding is that there would be a lot that you
14 would have to know about the customer, the customer's
15 needs, the -- the hardware and other software that the
16 customer might have, the pricing of the services versus
17 an upgrade, what else that upgrade might imply. I can't
18 say one way or the other, as I sit here today, without
19 having a specific scenario in front of me.

20 Q. So all the things, the factors that you just
21 mentioned, those are all things that you think bear on
22 the decision as to whether someone would -- a particular
23 customer might upgrade for your software?

24 A. Certainly those could be some of the
25 considerations, yes.

1 Q. We've been going for about an hour. Why don't
2 we take a ten-minute break.

3 A. Sure.

4 MR. CIESLAK: Okay.

5 THE VIDEOGRAPHER: Off the record at
6 10:12 a.m.

7 (Off the record.)

8 THE VIDEOGRAPHER: Back on the record at
9 10:27 a.m.

10 Q. (By Mr. Fazio) Dr. Meyer, I want to take you
11 back to paragraph 9 of your report. I want to make sure
12 I have a clear understanding here. So you'll see that
13 the second sentence of paragraph 39 says, "This market,
14 the tax depreciation and deferred tax services market,
15 is defined in reference to limitations of PowerTax,
16 which is the dominant tax offer in the IOU space." Do
17 you see that?

18 A. I do.

19 Q. I'm trying to understand the definition of your
20 market. So we talked about these limitations that were
21 -- or alleged limitations in paragraphs 40 and 41. Can
22 you help me -- can you define for me, when you are
23 talking about this market, what is included in the
24 market?

25 A. As I stated here in exactly in that sentence

1 that you're reading, what's included is our services --
2 well, the last sentence, actually, I think it sort of
3 says it most specifically to the question that you
4 asked. It includes services design and used to overcome
5 the limitations of PowerTax.

6 Q. Okay.

7 A. So it's the services, as it's stated there.

8 Q. So -- and can you help me understand what those
9 services consist of?

10 A. My understanding is that those services consist
11 of consulting services, writing code, you know,
12 sometimes called solutions, if you will, for overcoming
13 those limitations.

14 Q. And so is there any service that can be
15 provided by a consultant that implicates use of PowerTax
16 that is excluded from your definition of the tax
17 services market?

18 A. Again, I don't understand -- I think this is
19 similar to a question that you asked before, and I don't
20 understand the distinction that you seem to be trying to
21 make.

22 Q. Well, what I'm trying to understand is what is
23 the outer boundary of your market definition? You
24 listed off some -- in 40 and 41, you talked about some
25 alleged limitations. You told us about some tasks.

1 What I'm trying to understand is, is there any service
2 that can be provided that implicates PowerTax that would
3 not fall within your tax services market, your proposed
4 tax services market?

5 A. There may or may not be. I'd have to think
6 more about that specific question. I don't have an
7 answer, as I sit here today.

8 Q. Okay. So if the judge or a factfinder in this
9 case is trying to understand whether a particular
10 service falls inside the tax services market or outside
11 the tax services market, is there a test that they can
12 apply?

13 A. I'm not sure what you mean by a test in that
14 circumstance. As I said before, the -- a relevant
15 market definition exercise is by its very nature demand
16 side exercise. So it's a question of whether the
17 customer is demanding a particular service and whether
18 or not it falls into this category.

19 Q. Right. And with what I'm trying to understand
20 from you, Dr. Meyer, is what is this category? You said
21 this category. What is this category?

22 A. And as I stated here in any report, the
23 category is services designed and used to overcome the
24 limitations of PowerTax.

25 Q. And how do we determine if something is or is

1 not a limitation of PowerTax?

2 A. Again, the -- the relevant market is a demand
3 side exercise. So it's a question of whether or not
4 customers view something to be a limitation of PowerTax.

5 Q. Okay. And what did you do to define or to
6 ascertain what customers perceive as a limitation of
7 PowerTax such that we can define this market?

8 A. So as I stated in this particular section,
9 there are some specific limitations that Lucasys has
10 described in a number of different locations regarding
11 specific limitations. I note as well that there are
12 other sections of the report in which I discuss issues
13 that customers have with PowerTax. So the totality of
14 the report speaks to various types of limitations that
15 both Lucasys sees as a provider of such services and
16 that customers have described.

17 Q. And so it's any -- is it anything that a
18 customer says it is? Is that -- does that summarize
19 your view?

20 A. From the standpoint of a limitation of the
21 software, my understanding that is -- it's a limitation
22 -- it's a functionality that the customer demands that
23 PowerTax does not have. So by -- by it's sort of very
24 essence, it is -- comes from needs and demands that the
25 customer has.

1 Q. And so is it your view that any time a customer
2 expects more out of a piece of software than it is then
3 capable of providing, that the software is deficient in
4 some way?

5 MR. CIESLAK: Objection. Incomplete
6 hypothetical.

7 THE WITNESS: I don't have an opinion as to
8 that general question.

9 Q. (By Mr. Fazio) Okay. Well, in this particular
10 case -- let's go down to paragraph 42 and talk a little
11 bit more about this. Now, we can agree that there are a
12 number of service providers that would fall into your
13 proposed deferred tax services market, true?

14 A. Yes.

15 Q. And you lists -- you list here RCC, Regulated
16 Capital Consultants, true?

17 A. Correct.

18 Q. And just run -- I'm going to run through a list
19 of them, and if I -- if I hit one that you don't think
20 should be included, stop me and we'll talk about it. So
21 Deloitte, Price Waterhouse Coopers, KPMG, Ernst & Young,
22 R2 Consulting, and PowerPlan are all service providers
23 in your proposed deferred tax services market, true?

24 A. I certainly mention some of those. The two
25 that I don't mention, I would have to just go back.

1 Those names are familiar to me, but as I'm looking
2 specifically at -- at one particular paragraph, to be
3 able to answer that question, I would have to go back to
4 my report.

5 Q. And which are the ones that you're concerned
6 about?

7 A. I believe there were two that were not on the
8 list that I included in paragraph 42, but I note that my
9 list says including.

10 Q. Yes.

11 A. So I certainly can't rule those out, as I sit
12 here today, but again, I haven't committed either all of
13 the documents that I reviewed in reliance for my
14 opinions or on my entire report to memory.

15 Q. So, Dr. Meyer, can we agree that there are also
16 customers that have internal resources that can provide
17 the services that would otherwise be provided in this
18 deferred tax services market?

19 A. For some customers, that may be the case.

20 Q. Okay. When you're analyzing the deferred tax
21 services market, did you take that into consideration?

22 A. As a general matter, I -- I've spoken about
23 customers providing functionality on their own. Here in
24 this particular paragraph, I'm specifically talking
25 about other firms competing.

1 Q. Yes. But you agree that there are situations
2 in which customers can provide those services
3 themselves?

4 A. Again, I can't rule that out, as I sit here
5 today, but my understanding is that particular -- that
6 there are a number of situations in which customers have
7 choose to engage outside firms, including Lucasys,
8 including RCC, for example, and therefore, at the prices
9 and for the services provided, they have determined that
10 that is their best option.

11 Q. Dr. Meyer, is it fair to say that you've not
12 analyzed the relative market shares of any of the
13 participants in the tax services market?

14 A. I agree.

15 Q. And it's -- is it fair to say that you've not
16 analyzed any of the prices that are charged within this
17 alleged tax services market?

18 A. I would agree as to the use of the term
19 "analyzed," yes.

20 Q. Okay.

21 A. I certainly have seen information from Lucasys,
22 generally, about -- about its -- its supply of services
23 to this market.

24 Q. Okay. Aside from the information that you --
25 you've seen from Lucasys though, you've not looked at

1 what other consulting firms charge for these services?

2 A. Specifically on pricing from other consulting
3 firms, no.

4 Q. And you've not done any kind of empirical
5 analysis of pricing, is that fair, in the tax services
6 market?

7 A. I'm not sure what you mean by "empirical
8 analysis." As I said, I've certainly seen financial
9 documents from Lucasys, but in terms of other consulting
10 firms, I agree, I haven't done an empirical analysis.

11 Q. Have you done an empirical analysis of Lucasys'
12 prices in the tax services market?

13 A. I wasn't characterize what I have done as an
14 empirical analysis in the tax services market.

15 Q. What did you do in your analysis or your review
16 of Lucasys' pricing in tax services market?

17 MR. CIESLAK: Objection. Vague.

18 THE WITNESS: My recollection is that there
19 was discussion about the provision of services for
20 various customers of Lucasys. As I sit here today, I
21 can't specifically parse out the degree to which that
22 separately enumerated pricing or overall cost. I would
23 have to go back and look at those documents to refresh
24 my recollection.

25 Q. (By Mr. Fazio) And as I sit here today, do you

1 have an understanding as to whether or not Lucasys'
2 services pricing is higher or lower than any other
3 market participant?

4 A. I don't have that particular -- I'm not sure
5 exactly what you -- in what context you're referring to
6 that, but I don't have a specific analysis of that one
7 way or the other.

8 Q. It's fair to say, isn't it, that you've not
9 analyzed the relative quality service provided in the
10 tax software market by these different providers?

11 A. I disagree.

12 Q. Okay. In what way have you analyzed the
13 quality of the services provided in the tax services
14 market?

15 A. I believe your previous question talked about
16 the tax software market, and I have analyzed extensively
17 discussions of quality in the tax software market.

18 Q. I may have misspoken. I meant to ask you --
19 the question I meant to ask was: Is it fair to say that
20 you've not analyzed the relative quality of services
21 provided in the tax services market?

22 A. I certainly have, as I state throughout my
23 report, reviewed information about Lucasys' supply of
24 services into the tax services market, but in terms of a
25 -- a specific a analysis of relative quality, I would

1 agree.

2 Q. And is it fair to say that you're not
3 formulating an opinion about whether any individual
4 participant in the tax services market has market power?

5 A. I agree.

6 Q. And so then it's fair to say that you don't
7 claim that PowerPlan has market power in tax services
8 market?

9 A. I haven't come to a conclusion one way or
10 another on that.

11 Q. Can we agree that Lucasys is providing
12 consulting services today that are related to PowerTax?

13 A. I agree.

14 Q. And they're currently engaged by AEP to provide
15 PowerTax-related consulting; is that fair?

16 A. If I can just -- if by today you mean generally
17 speaking today, I don't know about literally today, but
18 if you mean sort of around this time, I agree.

19 Q. They are -- they are engaged by AEP currently.
20 They're doing work for AEP right now, are they not? And
21 by "right now" I don't mean right this second.

22 A. At this very instant, I can't say with
23 certainly, but I do understand that they're, generally
24 speaking, retained by AEP.

25 Q. And do you have a sense of what other customers

1 Lucasys is providing tax services to?

2 A. As I sit here today, I cannot recall the names
3 of the other Lucasys customers. I can -- I can recall
4 seeing information on that. It's just not coming to
5 mind, as I sit here today.

6 Q. Okay. On Page 6, the summary of opinions, last
7 bullet point on Page 6, second sentence, you say, "In
8 the tax services market, consumers have been harmed
9 because they face increase cost in risk of using
10 Lucasys, which for some consumers is a preferred service
11 provider." Do you see that?

12 A. Yes.

13 Q. Can you tell me first for which consumers of
14 Lucasys is a preferred provider?

15 A. (Witness examining document.) So my
16 understanding is that, for example, for Liberty, Lucasys
17 was a preferred provider, but that -- that contract was
18 terminated.

19 Q. So let me ask you about the Liberty situation.
20 Well, first of all, before we do that, tell me what are
21 the other ones that are preferred -- where Lucasys --
22 what are the other customers where Lucasys is a
23 preferred provider of tax services?

24 A. My recollection was that for NextEra, likewise,
25 Lucasys was a preferred provider, and the project was

1 terminated and not -- and that a -- an ongoing or a
2 continuation project was not -- Lucasys was not engaged
3 in a continuation project. My understanding was that
4 for Suez as well, there was a -- Suez did -- decided to
5 -- I take that back. I understand that they're still
6 consulting or they were continuing to consult for Suez.
7 I apologize.

8 Q. I was asking a broader question. Who are the
9 -- for which customers is Lucasys a preferred provider,
10 regardless of whether they stopped or continued? So you
11 mentioned Liberty, NextEra. You began to mention Suez.
12 With that clarification, I don't know if you want them
13 on the list or not.

14 A. I do understand that for Suez, Lucasys was a
15 preferred provider for those services, yes.

16 Q. Okay. Anyone --

17 A. And I understand for AEP as well, Lucasys was a
18 preferred provider for certain services. As I said,
19 again, my recollection is that there were and are other
20 customers as well, and I'm just not bringing them to
21 mind, as I sit here today.

22 Q. Okay. So help me understand. How is it that
23 for customers that we just talked about, for example,
24 they faced -- you say they faced increased cost and
25 risk. What were the increased costs that those

1 customers faced?

2 A. So the cost -- so first of all, as a matter of
3 economics, risk is a cost is a way of thinking of --
4 risk is a cost, and as a result of letters that were
5 sent and a lawsuit that was filed, those would represent
6 increased risk, and therefore, cost to -- to the
7 customers.

8 Q. Using Lucasys?

9 A. Increased cost of -- yes, of using Lucasys.

10 Q. Okay.

11 A. Yes.

12 Q. And have you done anything to quantify this
13 alleged increase in cost?

14 A. Not specifically in terms of dollars and cents,
15 no.

16 Q. Have you done anything to determine whether
17 competition broadly in your deferred or your tax
18 services market was impacted by any of this?

19 A. Yes.

20 Q. Okay. What have you done?

21 A. As I've laid out in my report, and you
22 mentioned one particular place in my report in the
23 summary of conclusions, but then the remainder of my
24 report, in particular, mention of the instances in
25 which, for example, customers were -- had Lucasys as a

1 -- as a provider of choice and then had to go to a -- a
2 second best solution or felt they needed to go to a
3 second best solution as a result of the exclusionary
4 conduct would be one of the ways in which competition
5 was specifically effected.

6 Q. Well -- so let me ask you, I mean, you're --
7 have you done any analysis of how they impacted the
8 market overall as opposed to just Lucasys?

9 A. Yes.

10 Q. Okay. Well, tell me how have you done it and
11 what --

12 A. Well, when you say the market overall as
13 opposed to Lucasys, I take the distinction that you're
14 making to be one of effect on customers, not just
15 Lucasys, and so what I described to you earlier was an
16 effect on a particular customer.

17 Q. Okay.

18 A. So that to me would be market -- the market
19 overall, not just Lucasys.

20 Q. So the impact on these customers, I mean, have
21 you done anything to quantify, for example, how it
22 impacted cost in the broad deferred tax services market?

23 A. I'm not sure what you mean by cost in the broad
24 deferred tax services market. I looked at specific
25 customers that were effected.

1 Q. Let me can you about a couple of these. For
2 one, with respect to Suez, is it your understanding that
3 the work that was being done by Suez falls within your
4 tax services market?

5 A. That's my understanding, yes.

6 Q. Okay. Describe for me what it is you
7 understand that Lucasys was doing at Suez.

8 A. I can't recall with any specificity the
9 specific nature of the work that it was doing at Suez.

10 Q. And we -- we can agree that the work continued
11 at Suez, true?

12 A. I agree, yes. That's my understanding.

13 Q. If it turns out that either all or a
14 substantial majority of the services that were being
15 provided to Suez were not PowerTax related, how would
16 that change your opinion in this case?

17 MR. CIESLAK: Objection. Incomplete
18 hypothetical.

19 THE WITNESS: Could you repeat the
20 question? I just want to make sure I hear it.

21 MR. FAZIO: Could you read it back?

22 (Whereupon, the question was read back on
23 the record.)

24 THE WITNESS: I would have to -- I can't
25 fully answer that, as I sit here today. My

1 understanding was that at least part of that was, in
2 fact, PowerTax related. So to the extent that that
3 understanding is different, I would have to have a
4 better understanding of the completeness of the
5 hypothetical before I could answer that question.

6 Q. (By Mr. Fazio) Well, you've concluded in your
7 report though -- I mean, correct me if I'm wrong, but I
8 understand your prior testimony in your report to be
9 that Suez is amongst this group of people who were
10 harmed because of PowerPlan's alleged exclusionary
11 conduct. Do I have that right?

12 A. Certainly from the standpoint of risk, Suez was
13 harmed in terms of the letters that it received. I
14 agree.

15 Q. Okay. And has any of that risk materialized
16 with respect to Suez, as far as you know?

17 MR. CIESLAK: Objection. Vague.

18 Q. (By Mr. Fazio) Well, actually, strike that.
19 I'll ask a better question then and probably a worse one
20 after that.

21 What was -- what is your understanding of
22 the risk that Suez was facing as a result of the letters
23 that PowerPlan sent?

24 A. My recollection was that Suez itself was -- had
25 ascertained that it was facing legal risk as a result of

1 engaging with Lucasys.

2 Q. And what -- what it was, that legal risk?

3 A. I would have to go back to the documents to get
4 a -- to refresh my recollection completely, but my
5 understanding is that it was concerned with the -- the
6 legal risk of engaging Lucasys that was where PowerPlan
7 had made certain statements with regards to -- to
8 alleged intellectual property.

9 Q. And you know that Suez elected to continue
10 using Lucasys, true?

11 A. That's my understanding. Yes.

12 Q. And do you know if there's been any of these
13 legal consequences that you've described ever
14 materialized for Suez?

15 MR. CIESLAK: Objection. Vague.

16 THE WITNESS: I'm not sure what you mean by
17 "materialized" in that particular -- the risk -- my
18 understanding is that Suez itself perceived there to be
19 such risk.

20 Q. (By Mr. Fazio) And then Suez moved forward
21 with Lucasys, true?

22 A. My understanding is that Suez moved forward
23 with Lucasys, yes.

24 Q. And they completed scopes of work that they
25 were hired for, true?

1 A. In general, I understand that they continued
2 the scope of work. Whether that's completely finished
3 or not, I just -- I'd have to go back. I don't have
4 that fully.

5 Q. And are you aware of any legal action that was
6 taken against Suez by PowerPlan?

7 A. Not to the best of my knowledge, no.

8 Q. Do you know of any customers that's been
9 subjected to legal action by PowerPlan relating to
10 Lucasys?

11 A. I certainly understand that Lucasys itself was
12 subject to I believe it was counterclaims with regards
13 to intellectual property, but in terms of a particular
14 customer -- and which could then obviously have an
15 effect on a customer as well, but I can't recall, as I
16 sit here today, any legal action on a customer, per se.

17 Q. Do you know for what percentage of the overall
18 market Lucasys is a preferred provider?

19 MR. CIESLAK: Objection. Vague.

20 Q. (By Mr. Fazio) Let me clarify. Do you know
21 what percentage of your alleged tax services market
22 Lucasys is a preferred provider?

23 A. No.

24 Q. Since this dispute arose between Lucasys and
25 PowerPlan in late 2019 to the current, have you done

1 anything to quantify the change in pricing for tax
2 services to IOUs in the United States?

3 A. No.

4 Q. Have you done anything to quantify the risk
5 that you describe for any IOU that consumes tax services
6 as a result of the dispute between PowerPlan and
7 Lucasys?

8 A. I have certainly seen the effect of such risk
9 on certain customers, yes.

10 Q. Okay. Well, let's -- we talked about Suez,
11 okay?

12 A. (Nodding yes.)

13 Q. What else are you referring to?

14 A. So by way of example, Liberty was another
15 customer that I understand was effected by -- by
16 PowerPlan's actions.

17 Q. And do you know if they were providing services
18 and they were -- strike that.

19 Do you know if they we were going to be
20 consulting in the tax services space or some other space
21 or a combination of the two?

22 A. My understanding was that would be in the tax
23 services space.

24 Q. So you told us about Liberty. You told us
25 about Suez. Are there this others?

1 A. As I had mentioned, NextEra was another
2 customer that I understand was effected by PowerPlan's
3 actions.

4 Q. Okay. Any others?

5 A. AEP, as I understand, was also effected by
6 PowerPlan's actions.

7 Q. Any others?

8 A. Those are the specific customers that come to
9 mind, as I sit here today, in which Lucasys had a
10 specific ongoing relationship in which that relationship
11 was and/or that customer was effected, but I understand
12 also that PowerPlan sent letters to a large number of
13 customers, and as we stated -- as I stated before, also
14 filed a lawsuit against Lucasys, which could have
15 certainly effected potential dealings with other
16 customers as well. So it's -- it's not possible to
17 fully ascertain the complete number of potential
18 customers that were effected because some may just not
19 have come to Lucasys at all because of the risk, but
20 there are the particular customers that I can
21 specifically observe.

22 Q. And so the ones you mentioned are the four
23 specific customers you can identify, correct?

24 A. Yes.

25 Q. So let's go back to paragraph 42. So back on

1 Page 22.

2 A. (Witness complying.)

3 Q. You'll see mid-paragraph you say, "Lucasys is
4 differentiated by these other competitors by its
5 division of both services and software so address the
6 limitations of PowerTax." Do you see that?

7 A. Yes.

8 Q. Okay. What are the software solutions that
9 Lucasys offers in the deferred tax services market?

10 A. My understanding is that the software involves
11 the writing of code to overcome certain limitations of
12 PowerTax, as discussed before.

13 Q. Okay. But what are the specific software
14 solutions? They have -- can you name any of them?

15 A. As I think I discussed earlier, my
16 understanding is that the specific software solutions,
17 whether one puts it in the software bucket or services
18 bucket, involved, in part, coding, computer coding, to
19 overcome those limitations, and that is specific to the
20 customers -- each individual customer with regards to
21 the specific needs of that customer.

22 Q. So you've seen Lucasys' website, haven't you?

23 A. I have.

24 Q. And you refer to it where you say, "Solutions
25 consist of a number of software products, including

1 Lucasys' copilot software." So is copilot, is that a
2 piece of software that relates to provisions of tax
3 services?

4 A. My understanding is that could be used to -- to
5 address certain limitations as -- in the overall
6 category of tax services, yes.

7 Q. Limitations and in the overall tax services.
8 Well, tell me how it does that. Tell me what -- can you
9 tell me what copilot does?

10 A. (Witness examining document.) I don't have a
11 detailed understanding of copilot, but my understanding
12 -- my general understanding is that it's software
13 developed by Lucasys to assist companies with certain
14 deferred tax needs.

15 Q. What sorts of -- what sort of functionality
16 does copilot have?

17 A. I don't have a detailed understanding of the
18 functionality.

19 Q. Do you have any understanding of the
20 functionality?

21 A. I certainly looked at the description of
22 copilot. I just don't have an understanding, as I sit
23 here now.

24 Q. Well, you said in your report that Lucasys is
25 differentiated because it provides services in software,

1 and then you say, "The solutions consist of a number of
2 software products, including Lucasys' copilot software."
3 So I'm trying to understand which of the products you,
4 having offered an opinion in this case, believe are part
5 of the tax services market. So can you tell me what are
6 the other products -- or the other software products
7 that differentiates Lucasys in the tax services market?

8 A. And as I indicated here and as I -- my previous
9 answer also indicates, my understanding is that the
10 copilot software, for example, is part of what I would
11 call -- the way I that would use it and I understand
12 it's used as a larger solution, which could be used for
13 -- which would be specific to a particular customer.

14 Q. Okay. In what type of larger solution would it
15 be used?

16 A. My understanding is that the larger solution is
17 whatever the customer needed in terms of consulting
18 services to include the overcoming of limitations with
19 regards to the PowerTax product.

20 Q. Okay. Do you know if PowerPlan offers a
21 products that is comparable to copilot with respect to
22 PowerTax?

23 A. I don't have a specific understanding of that.

24 Q. Okay. You didn't look into that while you were
25 working on your opinion in this case?

1 A. I very well may have, but I'm not a computer
2 software technical expert, so I wouldn't be comfortable
3 sort of -- and I can't recall specifically making that
4 one-to-one comparison.

5 Q. You understand that Lucasys advertises a
6 product that it refers to as deferred tax. Do you have
7 that understanding?

8 A. My understanding that generally it -- it
9 advertises a deferred tax, yes.

10 Q. Okay. And is the defer tax product something
11 that is used in the tax services market?

12 A. Again, I would have to go back to -- you're
13 asking me about particular products. I would have to go
14 back to the -- to the use of that particular term in the
15 way that you're using it to be able to determine whether
16 or not that would be the case.

17 Q. Okay. Well, I'm just trying to understand when
18 you said in your report that solutions consist of a
19 number of software products, and you're making that
20 point with respect to services, the services market.
21 I'm trying to understand what those software products
22 are so I can understand what's in the market and what's
23 not in the market. So we'll just take through the rest,
24 and you can just tell me if you know or don't know. Is
25 Lucasys' tax depreciation product something that is

1 offered as part of their services in the tax services
2 market?

3 A. And again, as I stated in an answer in your
4 previous question, in general, the services, including
5 solutions, which can include software, that address
6 the limitations of PowerTax certainly would be part of
7 that market. I would have to look at exactly what list
8 you're looking at to determine whether on that
9 particular list -- certainly deferred tax is key to that
10 functionality, and my understanding is that depreciation
11 of the fixed assets is a key input to that calculation
12 as well, but you're asking me about a certain -- it's
13 sounds like you're asking about a certain enumeration or
14 depreciation, and I would just need to look back at that
15 to be able to answer your question --

16 Q. Okay.

17 A. -- specifically.

18 Q. So as we sit here today, you can't tell me when
19 you wrote the sentence, "Solutions consist of a number
20 of software products," you can't tell me what the
21 software products are that you were referring to; is
22 that fair?

23 A. Again, I would have to go back to the
24 underlying source to be able to give you a complete
25 answer to that.

1 Q. Okay. And so let me ask you -- we'll go back
2 to another question. Let's assume for a second that
3 PowerPlan has a software product that could replicate
4 the functionality of copilot with respect to PowerTax.
5 Accept that as a representation to your -- as a
6 hypothetical. Let's assume that's hypothetically that's
7 true. PowerPlan's consulting business would also be
8 differentiated in that it was capable of offering
9 software solutions along with its services or to
10 facilitate its services?

11 MR. CIESLAK: Objection. Incomplete
12 hypothetical and vague.

13 THE WITNESS: As a general matter, I
14 certainly have, as I indicated earlier in that
15 paragraph, understand that PowerPlan participates in the
16 tax services market. With respect to that particular
17 example, I would have to consider that further before
18 indicating whether that particular example would be the
19 example, but in general, I understand that PowerPlan
20 itself participates in that market as well.

21 Q. (By Mr. Fazio) And so did you do anything to
22 determine whether any of the other service providers
23 that we've talked about, RCC and so on, whether any of
24 them also have software offerings that would facilitate
25 their provision of services in your tax services market?

1 MR. CIESLAK: Objection. Vague as to time.

2 Q. (By Mr. Fazio) Ever?

3 A. As I stated earlier, my understanding is that
4 those other products -- sorry, those other firms
5 certainly do compete, as a general matter, with Lucasys
6 and PowerPlan in that tax services market.

7 Q. Right. My question to you was: Have you ever
8 -- did you or anyone on your team ever gone out to
9 determine whether any of these other competitors also
10 have software offerings that facilitate your provision
11 services in the tax services market?

12 MR. CIESLAK: Same objection.

13 THE WITNESS: And again, there was mention
14 of sort of the time period, but also whether or not that
15 would be characterized as a software product versus
16 simply providing code within a services environment. I
17 can't recall specifically without looking at that
18 differentiation.

19 Q. (By Mr. Fazio) So when you talk about writing
20 code as part of the services that were provided, what
21 kind of code are you talking about?

22 A. What I'm talking about is -- is implementing
23 solutions, computer solutions, to be able to facilitate
24 and overcome some of the limitations.

25 Q. Yes. And so I'm asking you specifically, where

1 is this code deployed? Is it added to the PowerPlan
2 software or does it exist somewhere else? What is it
3 that you're -- what are you talking about?

4 A. I don't have a technical computer understanding
5 of how that would be described from a technical
6 perspective.

7 Q. And so if the judge or a factfinder wants to
8 understand whether a particular piece of software is
9 something that's used in aid of the tax services market
10 or is actually in the tax software market, how do they
11 differentiate between those two things?

12 A. Again, the differentiation here that's relevant
13 to the questions at issue in this matter are tax
14 services insofar as they are used to overcome
15 limitations of PowerTax so insofar as a customer has a
16 PowerTax application and is running that PowerTax
17 application or using that PowerTax application and
18 requires additional services to improve the
19 functionality.

20 THE VIDEOGRAPHER: Do you mind if I change
21 tapes?

22 MR. FAZIO: Go off the record for a second.

23 THE VIDEOGRAPHER: Off the record at

24 11:26 a.m.

25 (Off the record.)

1 THE VIDEOGRAPHER: This begins media unit
2 number two, and we're back on the record at 11:17 a.m.

3 Q. (By Mr. Fazio) Dr. Meyer, you say -- let's
4 jump over to paragraph 87 of your report. You say in
5 paragraph 87 -- it's the middle of the paragraph. "In
6 particular, I understand from my conversation with Mr.
7 Lantukh that Lucasys sought direct relationships with
8 customers as opportunities to understand their business
9 needs and directly to optimize development of software
10 solutions." Do you see that?

11 A. Yes.

12 Q. Now, you go on to say -- you talk about this
13 Nova product. You say, "I understand that Lucasys
14 developed -- for example, I understand that Lucasys
15 developed its Nova product (which does tax-based balance
16 sheet automation) by leveraging an existing relationship
17 with cooperation from a customer, Suez North America
18 Inc." So first of all, I wanted to ask you, do you have
19 an understanding as to whether or not the Nova product
20 addresses any limitation in PowerTax?

21 A. I don't have a specific understanding one way
22 or the other on that -- on that particular question, no.

23 Q. Do you --

24 A. But I don't assume that it does for purposes of
25 this discussion.

1 Q. You say -- can we agree that -- strike that.

2 Can we agree that Mr. Lantukh and Mr. Chang
3 in particular have been in the industry for many years?

4 A. That's my understanding, yes.

5 Q. Okay. And can we agree they both claim to have
6 relationships with potential customers in the industry?

7 A. That's my understanding, yes.

8 Q. And do you -- I thought this was
9 uncontroversial, but maybe we have a different
10 understanding. So do you have an understanding as to
11 whether or not Lucasys has claims it has developed
12 software products for the tax software market?

13 A. Yes, I understand it has, yes.

14 Q. Okay. So when we were speaking earlier about
15 your analysis of close substitutes in the tax software
16 market, you defined you didn't include any of Lucasys'
17 products, correct?

18 A. In terms of being able to -- to recall -- if I
19 can just, for a moment.

20 Q. Yes.

21 A. Specifically with regard to -- I was just
22 refreshing my recollection. Thank you. Specifically
23 with regards to a deferred tax solution, I can't recall,
24 as I sit here today, the specific -- I recall that there
25 was development of tax depreciation and deferred tax

1 application. Is I indicated here -- as I'm sitting here
2 today, I'm just not recall the specification to brand
3 names and their relationship to particular applications,
4 and I just don't want to misspeak as I'm being careful
5 since I'm not a technical expert.

6 Q. Okay. Well, let me ask you a broader question.
7 Maybe that will help. Is it your understanding today
8 that Lucasys has -- they have products that they could
9 take to an investor-owned utility and license them such
10 that the utility could replace PowerTax?

11 A. Specifically with -- I don't recall a specific
12 understanding about whether or not -- I don't have a
13 specific answer to your question.

14 Q. Well, they would need those products to enter
15 the tax software market, true?

16 A. Again, as I stated before, I understand -- and
17 this section refreshes my recollection as well with
18 regards to that understanding of the relationship
19 between the development of such software as an
20 ongoing -- as an ongoing development vis-a-vis the
21 customers.

22 Q. So from your perspective as an economist, is
23 Lucasys able to enter the tax software market today?

24 A. And again, as I've stated in this section and
25 in the other places in my report, my understanding is

1 that Lucasys has -- as I state in the next paragraph and
2 is -- and is explained in other places in this section
3 and other sections, that it has the necessary elements
4 to be able to enter that market, yes.

5 Q. Okay. And is -- is Lucasys in the tax software
6 market today?

7 A. I would not consider Lucasys to be in the tax
8 software market today. My understanding is that they've
9 been thwarted from effectively entering that market.

10 Q. Okay. And how long -- assuming -- let's assume
11 that none of the -- none of the alleged interference
12 ever occurred. Do you ever consider when they would
13 have entered the tax software market? Do you do that
14 analysis as part of your forming your opinions in this
15 case?

16 A. In -- in terms of a specific date and a but-for
17 world, I would not consider that part of my analyst.

18 Q. You didn't do that analyst?

19 MR. CIESLAK: Objection. Asked and
20 answered.

21 THE WITNESS: As I said, in terms of a
22 particular but-for date, I wouldn't consider that as
23 part of my analysis, no.

24 Q. (By Mr. Fazio) Okay. And did you consider
25 what additional resources Lucasys would have had to

1 invest into its business to enter the tax software
2 business?

3 A. Again, as part of my analysis, no, I would not
4 consider that to be part of my analysis.

5 Q. Okay. So Lucasys was founded in 2018; is that
6 correct? You say that on page --

7 A. That's my understanding, yes.

8 Q. And so it's now 20 -- early 2023, so say, a
9 little over four years Lucasys has been in business?

10 A. I agree.

11

12

13

14 A. I don't have that number committed to memory,
15 if that's true or not.

16 Q. Was that not something that was important to
17 you when you were forming your opinions in this case,
18 the resources that would be required for a potential
19 market entrant to bring product to the tax software
20 market?

21 A. My understanding is that Lucasys was developing
22 the software to enter the tax software market and had
23 the resources at hand. Specifically in terms of the
24 amount that it had spent in terms of dollars, that
25 wasn't particularly important, no.

1 Q. In terms of your analysis in this case, if you
2 go back to October of 2019, so before all of the --
3 before the dispute arose between Lucasys and PowerPlan,
4 do you have any understanding of how long it would have
5 taken from that point in the but-for world to get
6 product into the market? That's question one, and then
7 I'll give you question two after that.

8 A. Again, this is similar to a question that you
9 asked me just a few minutes ago. In terms of a
10 particular but-for world, that was not part of my
11 analysis.

12 Q. You state in your report that entry into the
13 market requires or would require significant capital
14 investment to design, test, and implement tax software.
15 You say that in paragraph 52.

16 A. (Witness examining document.)

17 Q. Did you do anything to determine -- set Lucasys
18 aside for a moment. Did you do anything to determine
19 what kind of capital investment would be required to
20 design, test, and implement tax software?

21 A. As I note in the remainder of that paragraph,
22 it was a discussion about PowerTax's entry, and there
23 may have been other places in any report as well that I
24 speak to some of those issues.

25 Q. Do you know how much investment was required to

1 bring the first version of PowerTax to the market?

2 A. I can't recall whether I've seen a dollar
3 figure, as I sit here today.

4 Q. It's not something that you specifically
5 analyzed?

6 A. Again, I've reviewed many, many documents in
7 this case. It's just not something -- and deposition
8 testimony. It's not something that comes to mind, as I
9 sit here today.

10 Q. Well, in terms of evaluating the possibility
11 that other firms could enter the tax software market,
12 right. You've said that there are capital requirements,
13 and you talk about specialized knowledge. I'm just
14 curious what you've done so -- what you've done to
15 determine what other firms may have this specialized
16 knowledge, capital, and other requirements that would be
17 necessary to enter the market, if they choose to do it.

18 A. My understanding, as I've discussed in the
19 report, is that Lucasys in particular has the
20 specialized knowledge to enter into that market and is
21 in the process of developing the particular software
22 solutions and was looking to those customers
23 relationships to further that development.

24 Q. Okay. My question was: Did you look at it --
25 did you look at it generally so that you would know how

1 much was required -- how much capital could be required,
2 what kind of relationships were required? Do you do
3 that just generally, not with respect to what Lucasys
4 says it wanted to do or whether Lucasys was going -- I'm
5 asking, generally, have you looked at any other -- have
6 you looked at the issue, generally, first?

7 A. Well, I don't understand the distinction you're
8 trying to make between generally and specifically.

9 Q. Okay.

10 A. My understanding is that Lucasys was looking to
11 enter that market, and so that would be at some level
12 both the general and the specific in terms of particular
13 entrance into the market. More generally, yes, I mean,
14 I talk about in this section on barriers to entry, for
15 example, and other places sort of more generally the
16 requirements for getting into the market.

17 Q. And did you consider what other software
18 providers or other firms that are out there may have all
19 of these prerequisites that you've identified to enter
20 the market?

21 A. In terms of what I observed in the market is
22 that PowerTax has that high market share, and I haven't
23 seen evidence that I can recall of another company
24 coming in and entering that market specifically.

25 Q. Have you heard of a company called Utegration?

1 A. Not to the best of my recollection.

2 Q. Okay. So you don't know what Utegration does?

3 A. Again, I seen a lot of documents. I would have
4 to go back and refresh my recollection to say with
5 certainly whether I've seen that or not, but it doesn't
6 sound familiar, as I sit here today.

7 Q. Okay. Have you done -- have you considered at
8 all whether any of the ERP providers could enter into
9 the market?

10 A. I haven't specifically with regards to any
11 particular ERP provider, but I note that based on my
12 understanding in terms of actually becoming a new
13 entrant, that I haven't seen a new entrant into this
14 market.

15 Q. Well, so can we agree that any ERP prior -- and
16 we're talking about -- I just want to make sure the
17 record is clear. We're talking about enterprise
18 resource planning software providers?

19 A. That's what I understand ERP to -- and that's
20 how I used it in my report. Yes, I agree.

21 Q. And can we agree the leading ERP providers
22 include firms like Oracle, SAP? I know there's others.
23 Those are the two that immediately comes to mind. Do
24 you believe that those are the large providers of the
25 ERP software?

1 A. Those are names that come no to my mind, and I
2 believe I discussed them as well, yes.

3 Q. And do you know of the PowerTax customers what
4 percentage of them use either SAP or Oracle?

5 A. If you're asking me whether they use SAP or
6 Oracle for other applications, other than PowerTax --

7 Q. Yes.

8 A. -- because you are specifically talking about
9 PowerTax customers. I don't recall, but I wouldn't be
10 surprised if a number of them used Oracle or SAP for
11 other applications.

12 Q. Okay. And can we agree that firms like Oracle
13 and SAP have significant software development experience
14 and resources?

15 A. I haven't -- I would not, as a general matter,
16 disagree with the notation that an SAP or an Oracle as,
17 in general, resources, but specific to PowerTax or a tax
18 deferred accounting or for that matter what resources
19 they had available at any particular point in time, I
20 haven't studied that in depth.

21 Q. Have you studied it at all?

22 A. Again, I certainly note the -- those companies
23 in my analysis, and I -- and I also have -- as I noted,
24 they have not specifically come out with a -- as I
25 understand it, with a tax deferred product for these

1 purposes.

2 Q. All right. And so can we agree that companies
3 like Oracle and SAP have significant capital resources
4 available to them?

5 MR. CIESLAK: Objection. Lacks foundation.

6 THE WITNESS: Again, that's not something
7 that I have studied. As I general matter, I understand
8 them to be large companies, but specifically as to
9 capital availability for any particular project, I
10 haven't done an exhaustive analysis of that.

11 Q. (By Mr. Fazio) Okay. Well, I'm assuming we
12 can agree that Oracle or SAP have greater capital
13 resources than Lucasys. Can we agree to that?

14 MR. CIESLAK: Objection. Lacks foundation.

15 THE WITNESS: I have not done an analysis
16 of that.

17 Q. (By Mr. Fazio) And you understand that to the
18 extent you have an ERP provider that has software that
19 exists at an investor-owned utility currently, they
20 would have knowledge of how the system operates within
21 that particular investor-owned utility; is that true?

22 MR. CIESLAK: Objection. Lacks foundation.

23 THE WITNESS: In terms of whether or not
24 they have knowledge that's relevant to tax deferred
25 calculations, I don't have knowledge of that one way or

1 the other.

2 Q. (By Mr. Fazio) And so I guess what I'm -- do
3 you see any structural reason why any ERP provider would
4 not be able to enter the tax software market if
5 choose to do so?

6 A. As a matter of economics, what I observe is
7 that they haven't chosen to do so. I don't have a
8 detailed understanding of why they have not chosen to do
9 so. That's not something that I've seen as publicly
10 available in terms of documents -- public documents from
11 SAP or Oracle, but what I can see as an economist is the
12 fact that they have not chosen to do so, indicating that
13 it's not in their economic interest to do so.

14 Q. And why is it that you -- why it not be in
15 their economic interest to do so if PowerTax, as you
16 indicate in your report, demands high prices?

17 A. I have not done a study of why SAP for Oracle
18 have -- wouldn't be in their economic interest. What I
19 can observe is their economic reality that they have not
20 entered this market.

21 Q. Paragraph 88, you say that Lucasys is
22 especially positioned with customer relationships,
23 industry experience, software development experience
24 necessary to enter the tax software market. Do you see?

25 A. (Witness examining document.) I'm sorry, I --

1 Q. It's paragraph 88.

2 A. I was turning pages.

3 Q. Sorry.

4 A. (Witness examining document.) Yes, I see that.

5 Q. Okay. And so I'm -- I'm just questioning --
6 I'd like to know what's the test that you would apply to
7 any given firm to determine whether it was prepared to
8 enter the tax software market?

9 A. I'm not understanding -- I don't understand
10 what you mean.

11 Q. So if you were to evaluate a -- not PowerPlan,
12 not Lucasys, but a third -- you were going to do a
13 evaluation of a third firm and make a determination as
14 to whether or not they were prepared to enter the tax
15 software market, what test would you apply to determine
16 whether they were taken prepared or not?

17 A. I don't understand the use of your word "test"
18 in that question. I would evaluate the evidence to
19 determine whether it appeared as though they were
20 looking to enter that market and able to enter that
21 market. I don't understand what you mean by "test."

22 Q. Well, how would you determine whether they're
23 able to enter the market?

24 A. Again , I would look at the evidence with
25 regards to some of the important aspects that I

1 understand to be important in entering this market.

2 Q. And so what I'm asking you is I'd like to know
3 what are the important aspects and what is the evidence
4 you would be looking at?

5 A. And again, as I -- this feels a little bit
6 circular. I'm trying to answer your question the best I
7 can. I would look at the types of things that I looked
8 at when I looked at Lucasys, for example, looking at
9 whether or not -- I mean, it would be a case-by-case
10 basis, and so Lucasys provides an example of what I
11 would look at.

12 Q. Okay.

13 A. In their case having a product in development,
14 having the customer relationships, having the industry
15 experience.

16 Q. And what about your point on capital, how much
17 capital is required?

18 MR. CIESLAK: Objection. Asked and
19 answered.

20 Q. (By Mr. Fazio) Well, let me ask it a different
21 way. Did you evaluate whether Lucasys has sufficient
22 capital or has ever had sufficient capital to enter the
23 market?

24 A. My understanding is that an important part of
25 that capital is the services revenue that it's -- that

1 it is obtaining and that it -- and that to the extent
2 that it was precluded from getting such services
3 revenue, that that would certainly impede its ability to
4 -- to have funds on hand, but it was still -- even in
5 that impeded state, was developing the deferred tax
6 software.

7 Q. So my question to you is simpler. I'm just
8 asking you how much capital is required. How much
9 capital would be required for Lucasys to come into the
10 tax software? Have you done that analysis? That's all
11 I'm asking. If you don't know, just tell me you don't
12 know.

13 A. If you're asking me for a specific dollar
14 amount, no, I don't know that.

15 Q. Have you ever done an analysis where you've
16 came up with a range of capital requirements?

17 A. No.

18 Q. And you've mentioned that Lucasys' preferred
19 business model is to generate revenue through its
20 services offerings. You said that a moment ago, true?

21 A. Yes, I did.

22 Q. And there are other ways for Lucasys to obtain
23 capital to develop software, true?

24 A. As a general matter , certainly there are a
25 number of ways of raising capital, yes.

1 Q. Right. So they could sell equity in the
2 company, for example. Is that a way they could raise
3 capital?

4 A. I can have a specific knowledge of that level
5 down to details for Lucasys in terms of feasibility of
6 raising capital.

7 Q. Well, let's just talk generally about how
8 people raise capital in startup situations. One way any
9 firm could do it would be to sell equity in the company;
10 is that fair?

11 A. Again, as a very general matter, some companies
12 chose to raise capital in that way.

13 Q. Okay. Some companies choose to get a loan from
14 a bank, true?

15 A. Again, as a very general matter, I'm aware that
16 in some companies choose to get bank loans, yes.

17 Q. Okay. And are you aware of any reason why
18 Lucasys could fund its capital requirements through a
19 means, other than providing services?

20 MR. CIESLAK: Objection. Outside the
21 scope.

22 THE WITNESS: Again, I have not done a --
23 an analysis of that particular question. If we can at
24 some point take a quick break, that would be great,
25 but --

1 Q. (By Mr. Fazio) So we're at -- well, let's go
2 off the record.

3 THE VIDEOGRAPHER: Off the record.

4 11:45 a.m.

5 (Off the record.)

6 THE VIDEOGRAPHER: Back on the record at
7 12:02 p.m.

8 THE WITNESS: Actually, can I just -- I
9 took the wrong glasses. Can we --

10 Q. (By Mr. Fazio) Yes. Just be careful with your
11 mic.

12 A. Yes. Thank you.

13 Q. Ready to go?

14 A. Yes.

15 Q. Okay. All right, doctor, I'd like to direct
16 your attention to paragraph 65 of your report.

17 A. (Witness complying.)

18 Q. And just so that we're oriented, this is in
19 your section where you say PowerPlant has market power
20 in the market for tax software, and I'm taking to you
21 the section -- section E, which is PowerPlan's PowerTax
22 is lower quality than if there were competition in the
23 market. Are you with me?

24 A. Yes.

25 Q. Okay. Now, doctor, I want to -- you're an

1 economist, true?

2 A. I agree.

3 Q. You don't consider yourself to be an expert in
4 software, true?

5 A. Insofar as the technical aspects of software,
6 yes, I agree.

7 Q. And you're not offering opinions about the
8 quality of -- you haven't personally tested the quality
9 of PowerTax -- the PowerTax software, have you?

10 A. As I stated earlier, I am not an IOU. I have
11 not personally utilized the PowerTax software.

12 Q. Okay.

13 A. Yes.

14 Q. Do you consider yourself an expert in the tax
15 depreciation and deferred tax accounting practices of
16 investor-owned utilities?

17 A. No, I would not consider myself an expert on
18 that.

19 Q. Do you --

20 A. Although I have studied that as part of my work
21 in this case, but in terms of specific expertise, no.

22 Q. Well, we're going to dive into each of these.
23 Don't -- do you consider yourself an expert in how
24 investor-owned utilities make software purchasing
25 decisions?

1 A. Again, some of that was part of my analysis, as
2 I've indicated in any report, but specifically an expert
3 in that area, no.

4 Q. Where in your report do you indicate that?

5 A. So there are places, for example, when I talk
6 about alternatives to PowerTax that touch on these sorts
7 of issues. That's one place that comes the mind, as I
8 sit here today.

9 Q. Okay. Any others?

10 A. I'd have to look through -- for example, in
11 this quality section, my recollection is there's
12 discussion of customer needs and customer reactions to
13 software. There may be other places as well.

14 Q. Have you ever been involved in the purchasing
15 decision of deferred tax or pretax depreciation software
16 for an industrial-owned utility?

17 A. No.

18 Q. I'm assuming you've never actually used any
19 version of the PowerTax software; is that correct?

20 A. Correct.

21 Q. I assume you've never used PowerPlan's tax
22 fixed assets software?

23 A. Correct.

24 Q. Have you ever seen live demonstration of
25 PowerTax software?

1 A. Not to the best of my recollection, no.

2 Q. What about tax-fixed assets, have you ever seen
3 a live demonstration of tax-fixed assets?

4 A. Not to my recollection, no.

5 Q. In your work on this case, you and your team,
6 you haven't undertaken any independent analysis of the
7 functionality of the PowerTax software, have you?

8 A. Again, I don't know what you mean by
9 "independent analysis." I've certainly independent of
10 what -- I've certainly -- whatever I've looked at is
11 noted in my report.

12 Q. Okay. Have you ever used or seen the Lucasys
13 software products being used, any of them?

14 A. Not to the best of my recollection.

15 Q. Have you ever done a comparison between the
16 features or functionality of the PowerTax software and
17 Lucasys' deferred tax or tax depreciation products?

18 A. No.

19 Q. Have you ever done a comparison of the features
20 and functionality of PowerTax in any other software?

21 A. There's a discussion of PowerTax and other
22 potential or other products that were -- or I should say
23 providers that PowerPlan had mentioned in various
24 documents in that section of my report, which talk about
25 some functionality issues.

1 Q. But you and your team never sat down, for
2 example, and charted out the features and functions of
3 PowerTax and then created a similar list for any other
4 piece of software?

5 A. I agree.

6 Q. And I assume that the answer is the same with
7 respect to tax-fixed assets, you've never gone through a
8 kind of exercise with respect to tax-fixed assets?

9 A. That exercise being sort of in numeration of --
10 what you said in your last --

11 Q. Correct.

12 A. I didn't want to paraphrase what you said.
13 What you said in your last question.

14 Q. Correct.

15 A. I agree.

16 Q. Have you done anything to determine the
17 perception of the quality of Lucasys' software among
18 potential customers and your alleged tax software
19 market?

20 A. My understanding is that Lucasys was thwarted
21 from really entering into that market. So, no, I have
22 not.

23 Q. But you understand that Lucasys has
24 demonstrated its products to various customers, correct?

25 A. My understanding is that there's been

1 development and that there's been some working with
2 customers, yes, in that regard. Whether that would be
3 properly characterized as demonstration, I just can't
4 recall, as I sit here today.

5 Q. And you've never reached out to any of the
6 customers that have seen Lucasys' software products to
7 get feedback from them on their perception of the
8 product?

9 A. Correct.

10 Q. Is there a test that a practicing economist
11 uses to measure whether a product's quality has been
12 impacted by an exercise in market power?

13 A. I don't understand what you mean by "test" in
14 that context. One looks at the evidence, as I've done
15 in this case.

16 Q. Well, you've looked at the evidence, and how do
17 you analyze the evidence? What's the process that you
18 go through to determine whether quality of a product has
19 been impacted -- has been impacted by market power or
20 participants?

21 A. What I've done in this case and -- is to look
22 at what market participants say about the quality of the
23 product.

24 Q. Okay. Have you done anything else beyond that?

25 A. I would characterize my work with regards to

1 product qualities specifically in those regards
2 understanding that either the market participants
3 include both PowerPlan itself and its own statements
4 about quality, Lucasys and its understanding and
5 development of services and other companies provision of
6 services to overcome some of those limitations, as we
7 talked about before, and then customers willingness to
8 pay for services to overcome those limitations. That's
9 -- those are in general. I mean, there may be other
10 things as well that I cite to, including statements by
11 customers. Those are the general categories that comes
12 to mind, as I sit here today, but of course, the
13 totality of my analysis is in my report.

14 Q. Is there -- so I take it there is no analytical
15 test that an economist would -- there's no analytical
16 test that you deployed in this circumstance to reach a
17 conclusion as to whether or not the PowerTax software is
18 -- its quality has been affected by PowerPlan's alleged
19 market power?

20 MR. CIESLAK: Objection. Vague and
21 misstates testimony.

22 THE WITNESS: Again, I analyzed the
23 evidence with regards to the various market
24 participants. I would consider that to be an analytical
25 exercise.

1 Q. (By Mr. Fazio) Okay. Is it your opinion in
2 this case that any customer criticism of the PowerTax
3 software is indicative of low quality?

4 A. In terms of customer criticism, what I have
5 looked at is the totality of the evidence with regards
6 to not only customer criticisms, but also the reaction
7 of customers in terms of paying money to overcome
8 certain limitations and PowerPlan's own statements about
9 the -- the lack of quality and the limitations. So what
10 I looked at goes beyond a few mere customer criticisms.

11 Q. Well, what did you do -- how does your analysis
12 account for positive or neutral customer comments about
13 PowerTax software?

14 A. I certainly have -- have looked at the -- for
15 example, there are some surveys that are discussed, and
16 there were a variety of comments within those surveys,
17 and I've looked at the totality of those documents, but
18 together with those documents, I've also looked at what
19 PowerPlan said about the import of those documents and
20 specifically -- and also what customers have done in
21 terms of paying for tax services to overcome some of
22 those limitations. So it's a combination of looking at
23 all of that evidence together.

24 Q. Okay. My -- how -- so how was it that you
25 incorporated positive or neutral customer comments in

1 your analysis? Did you do anything specifically to
2 address those?

3 A. I looked at the totality of the documents that
4 are cited in my report, which some of them include a
5 variety of different types of comments about the --
6 about the quality of the product and about the product
7 itself, but as I stated, I then went on to look at these
8 other aspects.

9 Q. Is it your opinion in this case that any
10 employee criticism of the PowerTax software is
11 indicative of low quality?

12 A. Again, my answer is that I don't look at one
13 particular piece of criticism, whether it be from an
14 employee of any particular company in isolation. What
15 I've done is I have looked at all of the evidence with
16 regards to quality in its totality.

17 Q. So your position in this case is you have
18 looked at all of the -- all of the evidence concerning
19 quality of the PowerTax system?

20 A. I certainly have looked at what I have
21 indicated in my -- in the footnotes to my report and my
22 Exhibit 2 in terms of materials relied upon. That's
23 what I can recall, as I sit here today.

24 Q. So with respect to the employee and customer
25 criticisms we've been talking about, we'll get to them

1 specifically in a second, but I'm curious, what did you
2 do to ensure that the antidotes that were counted in
3 your report were actually representative of the broad
4 perception amongst customers?

5 A. And again, as I -- I think I've stated now a
6 number of times, I looked at -- in addition to certain
7 comments and surveys that were done, I looked at what
8 PowerPlan itself stated about those surveys in their
9 totality and its reaction to them and then also the fact
10 that customers were paying services providers to
11 overcome some of the quality and other limitation --
12 quality issues and other limitations of PowerTax.

13 Q. So I hate to circle back to this, but I'm
14 afraid I have to. So explain to me what -- what are the
15 quality limitations in PowerTax that these customers
16 were allegedly paying money for?

17 A. So there's a section in my report that I talk
18 about specific limitations of PowerTax, and in this
19 particular section, I talk about other quality issues
20 that -- that customers and others have had commented on,
21 including PowerPlan itself, recognizing some of these
22 limitations.

23 Q. So when you're reviewing these comments, how do
24 you know which comments are direct to PowerTax and what
25 are -- I'm sorry, which ones are directed to PowerTax

1 alleged limitations? How do you know that? Is any
2 reference to PowerTax in a criticism a reference to
3 limitations?

4 A. I wouldn't -- I'd have to think more about this
5 question about limitations and quality, but I don't see
6 them as being one in the same. Certainly some of the
7 limitations also relate to quality issues, and quality
8 issues can become limitations, but I haven't used them
9 as synonyms in this report, at least that's not how I
10 would think about them, as I'm sitting here today.

11 Q. Well, I guess help me understand then, because
12 you said a moment ago that one of the reasons why you
13 think it's of low quality -- the software is of lower
14 quality than it would otherwise be is the dollars that
15 are spend in the tax service market are to address
16 limitations. Do I have that right?

17 A. I agree, yes.

18 Q. So can you differentiate for me, what is a
19 limitation of the software that requires service dollars
20 and what's a quality issue that requires service dollars
21 to address?

22 A. In terms of the limitations -- in terms of the
23 -- and again, I would want to think about this some more
24 because I think there's a -- there's a line that I
25 haven't -- and a usage of terms that I would want to be

1 careful about, but I -- I think about the tax services
2 market as I've defined it, specifically as addressing
3 limitations of the software, as I've indicated before,
4 but quality issues of things being just in general, as
5 it sort of talks about, a clunky or an aging platform
6 may or may not rise then to the level of limitations.

7 Q. Okay. Well, I appreciate you want to think it
8 through more, but unfortunately, it's the only chance I
9 get to ask you questions. So I'm struggling to
10 understand the distinction you're making. If I'm trying
11 to identify whether a service is related to quality or
12 related to limitation, how do I -- where does -- how
13 does the line get drawn between these two things?

14 MR. CIESLAK: Objection. Incomplete
15 hypothetical.

16 THE WITNESS: I don't know what you mean by
17 drawing the line between those two things.

18 Q. (By Mr. Fazio) All right. You talked about
19 limitations as one category of issues with PowerTax
20 software, and you just started telling us about quality
21 issues as a different group of issues associated with
22 the PowerTax software. I'm trying to figure out how I
23 make a decision about whether a particular -- a
24 particular issue for a particular client, whether it
25 goes into Dr. Meyer's limitation bucket or Dr. Meyer's

1 quality bucket.

2 A. And as I think I explained just a few minutes
3 ago, that's not a question that makes sense to me. As I
4 said, some of the limitations may be things that
5 customers view as quality issues, and some of the
6 quality issues may be also limitations. I don't see a
7 line as you're describing it in that way.

8 Q. Okay. So is it anything that a customer
9 perceives as you can either be -- it can be a limitation
10 or it can be a quality issue, but any time is a customer
11 is unhappy, that's an issue with the PowerTax software.
12 Is that what you're saying?

13 A. Well, I'm not sure what you mean by "an issue."
14 If a customer is unhappy, that's an issue -- with the
15 PowerTax system, then it seems to me that's an issue
16 that the customer has with the PowerTax system, but that
17 seems to be a totality, so I'm not sure what the
18 distinction is that you're trying to draw.

19 Q. Well, let's take it in a different direction
20 then. Have you made any determination as to how the
21 PowerTax system's quality would be different in a more
22 competitive environment or more competitive market?

23 MR. CIESLAK: Sorry, can you repeat the
24 question?

25 (Whereupon, the question was read back on

1 the record.)

2 THE WITNESS: And as a -- as a general
3 matter in this particular case, with a -- I've come to
4 the conclusion that had there been more competition,
5 there would be higher quality in this market.

6 Q. (By Mr. Fazio) And how did you reach that
7 conclusion?

8 A. Well, the totally of the evidence is -- as I
9 said, it's in my reports. Specifically as I talk about
10 in this particular -- well, as I talk about in other
11 situation -- in other parts of this report, there's a --
12 this market -- in terms of tax software is characterized
13 by one dominant player, and there hasn't been entry or
14 effective competition to that player for many years.
15 Lucasys has tried to come into that market and was
16 thwarted in that, at least today in fully participating
17 in that market, and we see indicators of low quality in
18 that -- in that same market, and customers who state
19 that they have feel as though they have no other place
20 to turn.

21 Q. Okay. My question though is: How is it that
22 the PowerTax software equality would be different in a
23 more competitive market? Can you answer that question?
24 Can you tell me what the difference would be in the
25 product?

1 A. In you're -- again, as I've just laid out, the
2 time between the competition and the quality, if you're
3 asking me specifically, you know, from a technical
4 standpoint, whether it would be PowerTax's software or
5 maybe -- or PowerPlan's software, sorry, or perhaps
6 Lucasys' software, that would bring me improved quality
7 from a technical standpoint. I don't have a specific
8 but-for world in mind.

9 Q. So you have not done the but-for analysis with
10 respect to quality in this case?

11 A. I would not characterize what I've done as a
12 but-for analysis, no.

13 Q. In your work on this case, have you made any
14 determination as to when you think the quality of the
15 PowerTax software began to decline as a result of
16 PowerPlan's market -- allege market power?

17 A. No.

18 Q. Do we agree that over the years, PowerPlant has
19 improved the PowerTax software?

20 MR. CIESLAK: Objection. Lacks foundation.

21 THE WITNESS: I certainly understand that
22 PowerPlan has -- has come out with updates, but in terms
23 of improvement relative to customers expectation of
24 software products, no, I would not agree on that.

25 Q. (By Mr. Fazio) So again, you're basing this

1 around customer expectation. That's your touchtone and
2 your analysis?

3 A. Again, as I've said before, customers reactions
4 are certainly a portion of that. It's also PowerPlan's
5 own assessment of those reactions, and Lucasys
6 certainly, in speaking with customers and working the
7 tax services market, has an assessment of that as well.

8 Q. And to be clear, you haven't -- we've been
9 talking about PowerTax, but you actually -- you're not
10 familiar with tax-fixed assets, true?

11 A. Again, I -- the products that I've been focused
12 on were -- as I mentioned before, I would have to go
13 back and refresh my recollection on exactly how
14 PowerPlan's fixed assets fits into that.

15 Q. Well, PowerPlan represents to PowerTax. Were
16 you aware of that?

17 A. Not as I sit here today.

18 Q. So it's not something you considered in forming
19 your opinions in this case?

20 A. Not that I can recall.

21 Q. So when you say that PowerTax's quality is law,
22 if PowerPlan is replacing it with a new next-gen
23 product, how does that impact your quality analysis of
24 the PowerTax product?

25 MR. CIESLAK: Objection. Incomplete

1 hypothetical.

2 THE WITNESS: Well, I would obviously have
3 to look at the time periods at issue, but certainly
4 insofar as the time period in which Lucasys was thwarted
5 in its ability to enter, you know, to the extent that
6 there's a future product coming out, that certainly is
7 something that would not necessarily -- that wouldn't,
8 as I would see it, effect, you know, the time period and
9 the specific customers to which Lucasys was attempting
10 to -- to enter this market and was thwarted from doing
11 so.

12 Q. (By Mr. Fazio) So, doctor, though, in forming
13 your opinions about whether PowerPlan was appropriately
14 investing into the development of the PowerTax product,
15 wouldn't it be relevant to consider whether they were
16 simultaneously working on a next-gen replacement forming
17 your opinions in this case?

18 A. In terms of the quality during the period of
19 time that I've been discussing, if that product is not
20 -- was not available to customers at the time, then that
21 wouldn't be relevant to competition at that
22 particular -- or quality at that particular point in
23 time.

24 Q. Okay. And if it's available today, is it
25 relevant to your analysis?

1 A. Again, it may or may not be. I would have to
2 look at that.

3 Q. So let me just offer this up as a hypothetical.
4 Assume with me with that tax-fixed assets is capable of
5 fully replacing PowerTax for customers or substantial
6 portion of customers. Is that -- would that be relevant
7 to your quality analysis vis-a-vis PowerTax?

8 A. In terms of the quality during the time period
9 in the past at issue, no, that wouldn't be relevant.

10 Q. But going forward, it would be relevant?

11 A. Again, I -- I can't tell, as I sit here today.

12 Q. Well, assume that it is -- well, let me --
13 strike that.

14 Help me understand why it is that you can't
15 -- you can't answer that question from today going
16 forward. What is it -- what is it that you would need
17 to know to be able to answer that question?

18 A. And I apologize, but I've lost track of what
19 that question is.

20 Q. I have too, to be totally honest with you. All
21 right. Let's go back. In terms of tax-fixed assets,
22 it's a -- assume with me that it is a replacement for
23 either PowerTax -- either or all or substantial portions
24 of current PowerTax customers. Are you with me on that
25 is assumption, my assumption I'm asking to you a accept?

1 A. I can accept that as an assumption, yes.

2 Q. Okay. You had said to me earlier that in terms
3 of the time period when TFA was not in the market, it
4 would not be relevant to the quality analysis, true?

5 A. Correct.

6 Q. And then I asked you if going forward it would
7 be relevant to the quality analysis, and I think you --
8 I was -- what's your -- let me re-ask you the question
9 so you can re-answer and we can get oriented. So going
10 forward, is the existence of that TFA products that I've
11 asked you to assume exist, is that relevant to your
12 quality analysis on a go-forward basis?

13 MR. CIESLAK: Objection. In complete
14 hypothetical.

15 THE WITNESS: So I -- I -- I'm struggling
16 because it's -- I really -- there's a number of
17 different aspects of your question that aren't relevant
18 to my analysis. Number one, I'm looking at what
19 happened in the past. Mine is not an analysis of --
20 specifically of the future. It really is of an analysis
21 of the effect of allegedly anticompetitive behaviors in
22 the past. So the -- and -- so in terms of analyzing
23 quality going forward, that's not what is inherent in my
24 analysis, and furthermore, that would not be a part of
25 my analysis -- well, that's not part of my analysis. I

1 guess I would just leave it there.

2 Q. (By Mr. Fazio) So you raise -- but you're
3 raising the quality issue with respect to PowerTax in
4 your report because you're saying that it's an
5 indication of market power, true?

6 A. Correct.

7 Q. Okay. And so would it be inconsistent with
8 your conclusion concerning market power, if fact,
9 PowerPlan had been investing in and now has put out a
10 new next-gen product that addresses your quality
11 issues -- assume that it addresses your quality issues?

12 MR. CIESLAK: Objection. Vague.

13 THE WITNESS: Again, that in and of itself
14 does not -- does not address the lack of quality in the
15 past, even if -- no matter what will happen in the
16 future, and there obviously, you know, questions that
17 would need to be addressed, but no, it would not effect
18 the quality issues that customers had.

19 Q. (By Mr. Fazio) Let me ask you, you referred to
20 some net promoter score surveys in your report?

21 A. Yes.

22 Q. I wanted to ask you some specific questions
23 about those. This is subsection two. It starts on
24 Page 34.

25 A. Yes.

1 Q. Can we agree that the net promoter score
2 surveys are intended to measure overall customer
3 experience with PowerPlan?

4 A. I don't know if that's the exact language
5 that's used. I can't recall with that specificity, but
6 as a general matter, that sounds -- that's consistent
7 with my recollection.

8 Q. Yes.

9 A. But I would want to go back to the documents to
10 see exactly how they characterized it.

11 Q. And so do you know what specific question was
12 posed to the customers in the net promoter score surveys
13 that you're relying on in your report?

14 A. I don't recall with specificity, as I sit here
15 today. I can go back to the documents, but I just don't
16 have that committed to memory.

17 Q. Do you have an understanding as to whether or
18 not any of the surveys, net promoter score surveys, that
19 you rely on in your report were focused specifically on
20 PowerTax?

21 A. I certainly recall that there was a specific
22 mention of PowerTax.

23 Q. Okay. My question's a little different. In
24 terms of the question that was being posed to the
25 customer, were any of the surveys as a whole directed to

1 PowerTax specifically, if you know?

2 A. Again, as I sit here today, I don't have the
3 survey questions committed to memory. I recall that
4 there was mention of PowerTax.

5 Q. And --

6 A. That's what I recall.

7 Q. And when you say there's mention of PowerTax,
8 you're talking about in the survey responses or in the
9 question posed in the survey?

10 A. Again, as I -- as I stated earlier, I don't
11 have committed to memory the questions that were posed.
12 I recall in the responses that there was mention of
13 PowerTax specifically.

14 Q. I'm sorry. Can you repeat your answer?

15 (Whereupon, the question was read back on
16 the record.)

17 Q. (By Mr. Fazio) Is it your understanding that
18 the same question was asked in each of the surveys that
19 were conducted?

20 A. Again, I don't have committed to memory the --
21 the exact survey instrument. I would have to go back
22 and refresh my recollection.

23 Q. Would it be -- is it important to you when you
24 were determining whether the comments that you were
25 extracting from your report were representative or not

1 to know whether or not it was the same question that was
2 posed each time?

3 A. No.

4 Q. It's not?

5 A. No.

6 Q. So any customer comment, regardless of what
7 prompted it, you were considering, any PowerTax-related
8 comment?

9 A. Again, the -- the comments and the -- the
10 quotes that I have extracted are in the context of then
11 PowerPlan's reaction to those. So it's specifically the
12 survey question is not the relevant piece.

13 Q. So is it fair to say -- I think we understand
14 this from your prior discussion. In your -- you are
15 have not done anything to determine, from a quantitative
16 perspective, whether the specific anecdotes that you
17 were reporting in paragraph 74 are representative of the
18 broader surveys from which they come at any quantitative
19 sense. Is that fair?

20 A. In terms of -- I'm not sure what you mean by --
21 by quantitative, but certainly the -- the totality of
22 those surveys was then commented on by PowerPlan. So I
23 would consider that to be sort of a holistic look at
24 those surveys and the implications that PowerPlan
25 specifically recognized as a result of those is surveys.

1 If you're asking for something else, then I'm not sure
2 exactly what you're asking about.

3 Q. So, for example, in your first bullet point,
4 paragraph 74, you were referring to the net promoter
5 survey -- score survey from 2020, first half. Do you
6 see that?

7 A. Are you talk about the first bullet point on
8 page --

9 Q. Yes, first bullet point.

10 A. -- paragraph 74?

11 Q. Seventy-four.

12 A. Yes, I see that.

13 Q. And you are quoting someone from Florida Power
14 & Light Company?

15 A. Yes.

16 Q. Now, my question to you is: When this person
17 entered in this comment, they also entered into a score,
18 correct?

19 A. I believe in were scores associated within of
20 the comments, yes.

21 Q. And did you calculate out -- did you compare
22 the score that was associated with this particular
23 comment, first bullet in paragraph 74, with, for
24 example, the average or all of the responses?

25 A. I did not.

1 Q. Okay. And did you do any kind of calculations
2 on the scores of any kind?

3 A. Specific calculations, no.

4 Q. Okay. And so you don't know if the score that
5 Mr. Geiser, who you were counting the first bullet, you
6 don't know if the score that he gave was substantially
7 above or substantially below the average of all
8 responses, fair?

9 A. Correct.

10 Q. All right. And you also don't know whether his
11 response is substantially above for below the average of
12 all of the responses from Florida Power & Light Company
13 in this survey, true?

14 A. Yes, I agree.

15 Q. So in terms of identifying whether this comment
16 is actually representative of customer sentiment, how
17 did you go about -- how did you go about doing it?

18 A. As I stated earlier, the import of these
19 comments is not solely the comments themselves, but then
20 also the reaction of PowerPlan to those comments, what
21 PowerPlan then took away from these surveys, this one
22 and then there was another survey that I believe goes by
23 the name of Stacks, and the -- and the implications that
24 PowerPlan itself took away from those surveys. So the
25 surveys are not insulation. It's the surveys and then

1 PowerPlan's takeaways from those surveys.

2 Q. Okay. For each of the folks that you've
3 identified in these comments that you've identified in
4 paragraph 74, the various bullet points, did you do
5 anything to determine which version of PowerTax the
6 particular customer was using?

7 A. I did not.

8 Q. Did you do anything to determine what other
9 PowerPlan product these particular customers -- sorry.
10 Did you do anything to identify the particular PowerPlan
11 software products that each of the IOUs that you have
12 listed in paragraph 74 were using at the time the
13 comments were made?

14 A. As I stated earlier, a number of them mentioned
15 specific products. Aside from that, no, I did not.

16 Q. And I take it no one ever communicated with any
17 of the folks you have listed here?

18 A. That's correct.

19 MR. FAZIO: It's 12:45. Why don't we take
20 a lunch break?

21 MR. CIESLAK: Okay.

22 THE VIDEOGRAPHER: Off the record at
23 12:45 p.m.

24 (Off the record.)

25 THE VIDEOGRAPHER: Back on the record at

1 1:40 p.m.

2 Q. (By Mr. Fazio) All right. Dr. Meyer, let's
3 get back into. So paragraph 81, Page 31 -- or 39 of
4 your report. Again, we're on the section on market
5 power, and here you're talking about PowerPlan's
6 pricing. Do you see that?

7 A. Yes.

8 Q. The last sentence of 81, you say, "PowerPlan's
9 pricing and margins are consistent with PowerPlan having
10 market power in the tax software market." I'll take
11 these one at a time. We'll talk about pricing first.
12 When you refer to pricing this in this section, you're
13 talking about PowerTax pricing specifically, true?

14 A. The -- the -- the -- the product that I'm
15 talking about when I'm talking about the market power in
16 the product is the PowerTax, yes.

17 Q. You conclude here that pricing is "high"; is
18 that accurate?

19 A. Yes.

20 Q. Okay. Have you done any quantitative analysis
21 to determine what the competitive price level should be
22 in the tax software market?

23 A. I have not, and that's -- not possible to do
24 here given PowerPlan's dominance in that market.

25 Q. Okay. And so when you say the PowerPlan's

1 pricing is high, it's high relative to what?

2 A. High relative to the competitive level

3 certainly is the -- is the -- is the -- is the -- I'm

4 sorry, I'm losing the word that I'm looking for -- is

5 the framing of it in the context of the way that

6 customers have described the pricing.

7 Q. Okay. But you told me a minute ago that you

8 haven't determined what the competitive price level

9 should be in this market, true?

10 A. I agree that I -- it's not possible.

11 Q. Okay.

12 A. -- given the extended duration and the market

13 power that PowerPlan has to determine a competitive

14 price level.

15 Q. And so there's no quantitative elements to your

16 exclusion in this section concerning pricing?

17 A. In terms of specifically what you were asking

18 about, determining exactly what the competitive price

19 level would be, I agree there's no quantitative

20 assessment of that particular element. It's not

21 possible to do.

22 Q. Have you done any analysis of PowerPlan's

23 pricing over time -- I'm sorry, PowerTax pricing over

24 time?

25 A. Certainly some of the quotes that I use are --

1 reflect pricing at different points in time. So to that
2 extent, there's analysis that occurs over time.

3 Q. You had access to the prices that were actually
4 paid by PowerTax customers to PowerPlan, true?

5 A. I remember seeing financial data of that
6 nature, yes.

7 Q. Okay.

8 A. To the best of my recollection.

9 Q. So in your work on the case, did you do
10 anything to analyze any trends that were in that data?

11 A. Not to the best of my recollection, no.

12 Q. And if you had done that, would you have
13 reported it in your report that was served in this case?

14 A. I don't recall doing such an analysis.

15 Q. So you don't know whether or not over the years
16 PowerPlan's pricing has gone up, down, or stayed stable
17 over, say, the last decade?

18 A. Not -- not as I sit here today, no.

19 Q. Can you tell me, what's your understanding of
20 how PowerPlan prices its PowerTax products?

21 A. I understand that there are license agreements
22 with pricing for various -- a set of products and
23 modules that a particular customer needs or demands.

24 Q. So when you're referring to PowerTax prices,
25 what are you -- what specifically are you referring to?

1 A. I'm referring to exactly the kinds of things
2 that the customers are talking about in terms of license
3 -- as one says, license pricing. Different terms might
4 be used by different customers.

5 Q. Well, so when you're reading these customer
6 comments, you know, explain to me how it is that you're
7 -- you're evaluating these comments to determine whether
8 they are fair or accurate, reasonable observations about
9 PowerTax pricing.

10 A. I'm evaluating these as comments provided by
11 customers who are in -- in this industry and who are
12 evaluating their own opinions as to the pricing in this
13 particular case. There's other times when I talk about
14 other aspects of the survey, but particularly here with
15 regards to pricing.

16 Q. And so when you -- when you talk about pricing
17 or prices in your report, are you talking about the
18 license fee itself?

19 A. Certainly the license fees are -- are what I
20 have in mind in terms of pricing, but it really is, as I
21 say, consistency of the customer comments with high
22 pricing, which is indicative of market power. So it's
23 those three things together.

24 Q. And so what about -- are there any other
25 elements to the cost of PowerTax that you consider while

1 -- when you're putting your report together?

2 A. Well, certainly for some customers, as I've
3 indicated, they require additional services in what are
4 to remedy certain limitations of the functionality that
5 they require with PowerTax. So to the extent that that
6 is an additional cost that customers incur in order to
7 get the complete functionality that they need or that
8 they're demanding from PowerTax, that would be an
9 additional cost.

10 Q. Do you know how it is that PowerPlan generates
11 revenue, if at all, after it licenses a -- licenses
12 PowerTax to a customer?

13 A. In addition to the licensing revenue, my
14 understanding is that PowerPlan sometimes provides
15 additional services as well that I -- that I mentioned,
16 I believe, elsewhere in the report.

17 Q. Is there anything else?

18 A. My understanding is that some PowerTax
19 customers also paid for other sorts of PowerPlan
20 products and services outside of PowerTax.

21 Q. In your considering the pricing of PowerTax,
22 did you consider at all whether there were differences
23 between non-premise or cloud-based implementation of
24 PowerTax?

25 A. When I was looking at pricing in this section,

1 I was looking at, most generally, the perception of
2 pricing by customers, regardless of the particular
3 platform.

4 Q. So would you agree with me that a perpetual
5 license is a one-time licensing event in terms of the
6 fees that are being paid?

7 A. I understand that a license could be structured
8 in that way.

9 Q. Do you know how PowerPlan structures its
10 licenses -- its customers for PowerTax?

11 A. I -- as I stated earlier -- I was just looking
12 to refresh my recollection on their software sales and
13 the services side. As I indicated earlier, revenue
14 amounting from both of those, but specifically as to
15 more specifics of the licensing for PowerTax, I just
16 can't recall, as I sit here today.

17 Q. Have you reviewed any of the license agreements
18 that PowerPlan has with its customers concerning
19 PowerTax?

20 A. I can't recall one way or another, as I sit
21 here today.

22 Q. Do you have a sense of how many of Power -- of
23 PowerPlan's PowerTax customers have on-premise
24 appointments versus cloud-based appointments?

25 A. I do not.

1 Q. Have you looked at how PowerPlan prices any of
2 its other software modules?

3 A. Not specifically.

4 Q. So have you done something generally?

5 A. Not that I can recall, no.

6 Q. Have you done anything to compare PowerTax
7 pricing to any of the other PowerPlan software modules?

8 A. Not that I can recall.

9 Q. Would it be relevant to your analysis in this
10 case if PowerPlan's structure to its PowerTax pricing
11 was the same as it is for all of its other software
12 modules?

13 MR. CIESLAK: Objection. Incomplete
14 hypothetical.

15 THE WITNESS: Not one way or the other, no.

16 Q. (By Mr. Fazio) Now, you -- again, you're
17 citing a number of net promoter score result or
18 responses paragraph 82. Do you see that?

19 A. I do.

20 Q. In the document that you cite for all of these
21 is indicated in the footnote PowerPlan 01595157. Do you
22 see that and it kind of continues on?

23 A. Yes.

24 Q. So you have three --

25 A. I see that.

1 Q. Okay. Do you have a sense of how many survey
2 responses there were reflected in PowerPlan 0159157?

3 A. Not off the top of my head, no.

4 Q. Basis to dispute that it's more than 1,000?

5 MR. CIESLAK: Objection. Lacks foundation.

6 THE WITNESS: Again, I -- I don't have
7 these documents for this particular document committed
8 to memory.

9 Q. (By Mr. Fazio) Let me ask you a different way.
10 You have -- you've identified three specific comments,
11 and we can go through these in a minute, but do you
12 think that it's reflective of the overall sentiment of
13 the net promoter score survey to cite to three out of
14 700 responses amongst folks that had the income tax
15 suite?

16 MR. CIESLAK: Objection. Lacks foundation.

17 THE WITNESS: Again, what I'm going here,
18 as I'd mentioned in some earlier questions as well, is
19 in this particular case, it's just looking at customer
20 comments in this case that are consistent with the
21 market power based on their discussions of pricing.

22 Q. (By Mr. Fazio) Okay. And have you picked
23 three comments out of 700 responses, do you think that
24 that's reflective of the overall sentiment of customers?

25 MR. CIESLAK: Objection. Lacks foundation.

1 Incomplete hypothetical.

2 THE WITNESS: Again, I would have to go
3 back to the underlying document to refresh my
4 recollection on the specifics, but the -- the point is
5 simply the -- the consistency of these customers
6 comments with regards to the market power. It's in the
7 context of how I looked at pricing here.

8 Q. (By Mr. Fazio) When you say, "consistency," if
9 you reported antidote from three out of four respondents
10 that talk about price, is that consistent with the
11 broader survey response?

12 A. As I said, it's talks here in this section of
13 my report about specific customers whose perception of
14 pricing is consistent with the market power.

15 Q. So as a practicing economist, do you think that
16 it's reasonable to take three antidotes from a net
17 promoter score survey and rely on those to reach the
18 conclusion that pricing in the market of a particular
19 product is high?

20 MR. CIESLAK: Objection. Misstates
21 testimony.

22 THE WITNESS: Again, I -- just to be clear,
23 I've been very particular in terms of what this
24 particular section is showing, and it's providing
25 evidence that it's consistent with high pricing and

1 market power.

2 Q. (By Mr. Fazio) My question to you though is:
3 Why didn't include any commentary about other -- other
4 survey responses that did not indicate concern of
5 pricing?

6 A. I can't recall, as I sit here today -- again, I
7 haven't committed the -- these documents to memory.
8 What I recall is when pricing was mentioned, that --
9 that expensive pricing was what the survey respondents
10 mentioned, and I -- I indicate some of those responses
11 here.

12 Q. Okay. Well, let's look at these bullet points.
13 So paragraph 82, first bullet point. Can we agree that
14 the comment that you report is not specific to PowerTax?
15 Is that fair?

16 A. I agree that PowerTax is not specifically
17 mentioned in this -- in this quote.

18 Q. Okay. And you never reached out to Mr. Donahue
19 or anyone at National Grid to find out if others at
20 National Grid believed that pricing model was extremely
21 high?

22 A. I did not.

23 Q. And you didn't determine what other products
24 National Grid licenses in forming your opinions in this
25 case?

1 A. Again, I don't have this document committed to
2 memory to the extent there's additional relevant
3 information in the document on that question.

4 Q. Well, did you go and look to see what other
5 products National Grid licenses from PowerPlan in the
6 first half of 2020 when the survey was conducted?

7 A. Again, as I said, I don't have the document
8 committed memory, but I can't recall specifically doing
9 that analysis.

10 Q. And did you look to see what prices National
11 Grid is paying for the products that they licensed?

12 A. No.

13 Q. So look at the second bullet point. Can we
14 agree that the second bullet point doesn't refer
15 specifically to PowerTax?

16 A. I agree that the term "PowerTax" is not -- is
17 not used.

18 Q. Okay. In what way do you think -- are you
19 under the impression that this is a reference
20 specifically to PowerTax?

21 A. I have an understanding that this refers
22 certainly to PowerPlan products, and it's talking about
23 asset, which I take to be fixed asset management, but
24 again, I don't have these -- this documents memorized,
25 so I'd have to go back to give you a more complete

1 answer.

2 Q. Well, let's just talk about the words that are
3 in your report that you've quoted here. Second -- the
4 second sentence, right, "Consultant hour rates are much
5 higher than market with no room for negotiation." Is
6 that a reference to the tax -- the PowerTax market or to
7 the services market?

8 A. My sense is that that would be to consulting,
9 be it in the services market as is relevant to PowerTax
10 or other consulting.

11 Q. And it says, "Overall" -- the comment includes
12 "Overall quality of services delivered is average at
13 best." Is that services or software?

14 A. Again, I would have to go back to the document
15 to specifically answer that question that you posed. My
16 understanding -- my recollection is that it's a general
17 statement, but again, I don't have these documents
18 memorized, so in order to give you a complete answer, I
19 would need to go back to the document.

20 Q. Do you recall in the spreadsheet that you've
21 cited here -- it's a spreadsheet, and the only
22 commentary that really appears from the survey is the
23 comments that you're quoting. Do you have a
24 recollection if there's something else in there that
25 would be relevant to the questions I'm asking you?

1 A. Again, I have not memorized these documents. I
2 don't -- I would have to go back and look to see what
3 else might be on that document. I just haven't
4 memorized these documents.

5 Q. And like with National Grid, you didn't go and
6 try to determine what specific products industries have
7 licensed as of the second half of 2020 when this
8 response was given or the prices they were paying for
9 those products?

10 A. Correct.

11 Q. Last bullet. So, tell me, do you see a
12 specific reference to PowerTax in the last bullet?

13 A. (Witness examining document.) Again, I note
14 that here they're specifically talking with the tax
15 planning manager and asset-intensive organizations, both
16 are which are consistent with PowerTax, but I agree that
17 PowerTax, that phrase is not specifically used.

18 Q. And like the others, you didn't do anything to
19 determine what PowerPlan products and services had
20 licensed as of the first half of 2021 or the prices they
21 paid for those products?

22 A. Correct.

23 Q. In paragraph 83, you talk about margins, and
24 you say that financial documents PowerPlan provided --
25 sorry. "In financial documents that PowerPlan provided

1 to its parent company, Roper Technologies, PowerPlan
2 reported a gross profit margin of over [REDACTED] on its
3 tax products." Do you see that?

4 A. Yes.

5 Q. At what level of margin is an exercise of
6 market power implicated to have?

7 A. I don't understand.

8 Q. Okay. So when you say that it's consistent
9 with your -- you're saying here that an [REDACTED]
10 margin on tax products is consistent with having market
11 power. How did you make that determination?

12 A. As is indicated in this paragraph, I did not
13 have -- the information that I had available to me on
14 margin was limited, but the margin -- profit margin
15 information that I had, limited though it was, was
16 certainly consistent with market power.

17 Q. In what way?

18 A. In that a profit margin is between zero and
19 100 percent, and [REDACTED] is a relatively high profit
20 margin in the realm of overall profit margins, and so I
21 looked at what I had available to me simply to see
22 whether there was consistency with market power.

23 Q. Is there a test that you as a practicing
24 economist apply to determine whether a specific profit
25 margin indicates market power or not?

1 A. There's not a specific test. And again, I had
2 very limited visibility as to margins in the relevant
3 set of products, so I'm simply, you know, reporting here
4 what I was able to observe and the limited implications
5 that I could draw from that.

6 Q. Well, the implication that you draw from it is
7 that PowerPlan had market power. I'm trying to see how
8 you went from [REDACTED] margin to conclusion. So did you
9 compare the gross profit, as reported in paragraph 83,
10 with any other products that PowerPlan reports in its
11 financials?

12 MR. CIESLAK: Objection. Misstates
13 testimony.

14 THE WITNESS: Again, I disagree with the
15 premise of the question.

16 Q. (By Mr. Fazio) Okay. Well, did you compare
17 [REDACTED] profit margin that you're reporting in
18 paragraph 83 with any other product line that PowerPlan
19 -- any other line of software that PowerPlan produces?

20 A. Specific to that question, no, that's not a
21 comparison that I did.

22 Q. Okay. And did you compare the 85 percent to
23 any other software company?

24 A. I did not.

25 Q. Can we agree that high margins can exist even

1 in competitive markets?

2 A. I don't disagree. As a very general matter,
3 high profit margins can exist, yes, in competitive
4 markets, yes.

5 Q. In market participants without market powers
6 can earn high margins, true?

7 A. If you're asking me in a very general way sort
8 of in general if that can be true, yes, that can be
9 true.

10 Q. Do you know what specific products are included
11 in the [REDACTED] figure that you're report in
12 paragraph 83?

13 A. I would have to go back to the -- to the source
14 document to -- I don't have -- I don't recall, as I sit
15 here today.

16 Q. So if it excluded things, other than PowerTax
17 as we defined them today, would that affect your
18 exclusions concerning profit margins?

19 A. Again, as I have stated now several times, I
20 had very limited information available from PowerPlan
21 regarding the question of margin, so I simply looked at
22 the information that I had to determine whether or not
23 there was consistently or not. That's as much as I was
24 to do based on the information that PowerPlan -- that I
25 saw from PowerPlan.

1 Q. Did you do anything to investigate economic
2 literature, the use of profit margin as a metric for
3 market power?

4 A. I'm certainly aware of -- of an economic
5 literature that talks about profit margins and market
6 power, yes.

7 Q. And is it your view that market power -- that
8 it's generally accepted amongst economists, that market
9 power is a fair indicator of -- strike all of that. I
10 went backwards.

11 Is it your understanding or your view that
12 amongst economists, it's generally accepted that profit
13 margins are a reliable indicator of whether a market
14 participant has market power?

15 A. Again, I would say in a general matter -- as a
16 general matter, that's a question that's specific to the
17 situation and, you know, due to the limited visibility
18 that I had about profit margins, I was very careful in
19 terms of how much information I could glean from the
20 limited information that I had in light of -- in light
21 of literature and -- and the limited information that I
22 had.

23 Q. In terms of -- you said the limited information
24 you had. What additional information did you feel like
25 you needed to investigate whether this margin was

1 indicative of market power or not?

2 A. To the best of my recollection, I looked
3 through the -- the documents -- to the best of my
4 recollection, this is the only place where I saw a
5 profit margin that was related specifically to tax
6 products and as it's indicated in sort of this
7 particular document. So -- and I don't recall the level
8 of specificity, as I sit here today -- again, I haven't
9 committed these documents to memory, but I don't recall
10 a lot of additional specificity in terms of all of the
11 inputs into the -- into the [REDACTED], and I could be
12 wrong on that, as I sit here today. I just can't recall
13 that document. So I was able to use what I had, which
14 was the information to -- to indicate consistency with
15 market power.

16 Q. Let's switch gears again. Page 44 of your
17 report, section C where you indicate PowerPlan's
18 conducted has impeded Lucasys' ability compete. It's at
19 paragraph 90. Are you there?

20 A. (Nodding yes.)

21 Q. Sorry.

22 A. Yes, I am there.

23 Q. Now, in this section, we talked a little bit
24 about this earlier, so we'll try and not belabor it. So
25 these four -- you identified four customers, specific

1 customers, where you say PowerPlan interfered with
2 Lucasys' relationship with its customers. Do you see
3 that, starting at 92, paragraph 92?

4 A. Yes.

5 Q. Okay. And I think you told me earlier that
6 these are the -- these are the four specific customers
7 that you can identify. There's specific examples where
8 PowerPlan was interfering directly with a customer
9 relationship?

10 A. Yes, I agree.

11 Q. Okay. Can --

12 A. I would say specifically where it also -- where
13 Lucasys was either currently working with or had the
14 least a contract to work with the customer. There's
15 evidence of letters being sent to many, many customers,
16 which could indicate interference, but this is
17 specifically with regards to specific customers that had
18 either engaged Lucasys or were, you know, planning to
19 use Lucasys specifically.

20 Q. Okay. And so with that -- with that, these are
21 -- that clarification, these are the only four that fall
22 into that category for you?

23 A. Yes, to the best of my recollection, yes.

24 Q. Okay. Let me ask you : Did you -- you've seen
25 the depositions of the various customers that were

1 deposed in this case?

2 A. I've seen customer depositions, yes.

3 Q. Did you ever ask counsel for Lucasys to seek
4 depositions from any other customers?

5 MR. CIESLAK: Objection.

6 THE WITNESS: Not to the best of my
7 recollect.

8 MR. CIESLAK: That's fine. Go on.

9 MR. FAZIO: I agree. That was close.

10 Q. (By Mr. Fazio) So not to the best of your
11 recollection. Okay. Would it have been helpful to you
12 to have testimony from other customers beyond the four
13 that are listed here in paragraph 92 in forming your
14 opinions about whether or not PowerPlan interfered with
15 Lucasys in the market?

16 A. I'm not sure what you mean by "helpful." This
17 certainly -- the evidence I reviewed certainly was
18 sufficient to reach my conclusions.

19 Q. Now, in -- of the examples that are set forth
20 in paragraph 92, with respect to each of these, are
21 there any other specific examples of interference that
22 you intend to testify about through each trial with
23 respect to each of these four customers? Do you follow
24 my question?

25 A. No.

1 Q. Okay.

2 A. I don't.

3 Q. Your description of the alleged interference
4 with each of them, this is -- you described the
5 interference that you think caused the alleged harm in
6 paragraph 92?

7 A. (Witness examining document.) I described the
8 specifics of the -- as I said, the examples of such
9 interference here. I agree with that.

10 Q. So let's just -- we'll go through these
11 quickly. The first bullet point relates to NextEra.
12 You say in your last sentence -- last sentence, "Even
13 though the terminated project only involved services,
14 Mr. Lantukh testified that the project would have led to
15 NextEra licensing the copilot product after the
16 completion of the existing contract." Do you see that?

17 A. Yes.

18 Q. So, first of all, is copilot is in the services
19 market or in the software market or do we not know?

20 A. And I think you are asking me about these
21 earlier, and I just -- let me just refresh my
22 recollection.

23 (Witness examining document.)

24 I would have to go back and remind myself.
25 I just don't want to testify incorrectly as to those

1 particular markets. My recollection is that it's part
2 of the solutions that would be today considered part of
3 the services market, but I would have to go back and
4 just double-check.

5 Q. So the NextEra product, as you understand it,
6 involved only services?

7 A. To the best of my recollection, as I sit here
8 today, I would want to go back and double-check on that.
9 That's my recollection, as I sit here today, but I could
10 be -- I could be mistaken on that.

11 Q. What, if anything, did you do to verify Mr.
12 Lantukh's statement that the project would have led to
13 NextEra licensing the copilot project -- product at the
14 completion of the contract?

15 A. As I stated, my understanding is that that is
16 -- that's his opinion based on his interaction with
17 NextEra.

18 Q. So setting aside Mr. Lantukh's opinion, did you
19 look at this documents or do anything else to verify
20 whether his opinion was accurate or inaccurate?

21 A. Not that I can recall.

22 Q. Tell me how -- in what way was NextEra harmed
23 by PowerPlan's conduct in this situation.

24 A. My recollection from talking to Mr. Lantukh or
25 reading his deposition was that NextEra wanted to

1 continue to work with Lucasys, and as a result of the
2 interference, did not do so.

3 Q. And so how does that harm NextEra?

4 A. That harms NextEra because NextEra wants to --
5 or demands a certain product or service that as a result
6 of the interference is unable to acquire from Lucasys.

7 Q. So it's -- aside from customer preference, can
8 you point to any other harm that has fallen on NextEra
9 as a result of the alleged conduct in October of 2000 --
10 October or November of 2019?

11 A. I'm not sure what the -- other than customer
12 preference refers to -- I mean, the -- the ability or
13 the lack of in ability of a customer to -- to purchase a
14 product or service as a result of the interference that
15 it wants to purchase, that in and of itself is a
16 competitive harm.

17 Q. Did you consider --

18 A. Both to the competition as a whole and to that
19 customer.

20 Q. Did you do anything to determine whether
21 NextEra was agnostic as to whether they used Lucasys or
22 another provider?

23 A. My understanding is that they were using
24 Lucasys for certain services and wanted to use Lucasys
25 for additional services, indicating a preference for

1 Lucasys.

2 Q. Do you know if the corporate representative of
3 NextEra who testified in this case was ever asked if
4 they were perceived that they were harmed as a result of
5 this?

6 A. I have not committed the depositions to memory.

7 Q. AEP, the next bullet point down, you say -- and
8 I'm jumping down the last sentence. You say, "I
9 understand that AEP paused using Lucasys' consulting
10 services in response to PowerPlan's demand that would
11 have eventually resumed using Lucasys' services." Do
12 you see that?

13 A. Yes.

14 Q. Can we agree that the alleged pause was only a
15 couple of months?

16 A. I don't recall, as I sit here today, exactly
17 what the duration of the pause was.

18 Q. Was the duration of the pause relevant to your
19 determination as to whether or not AEP was harmed as a
20 result of the communication it received from PowerPlan?

21 A. The specific duration of the pause was not
22 specifically relevant. I mean, the fact that it was not
23 able to have access to Lucasys' consulting services as
24 it wanted to and on a schedule that it wanted to
25 indicates that there was a harm to competition and a

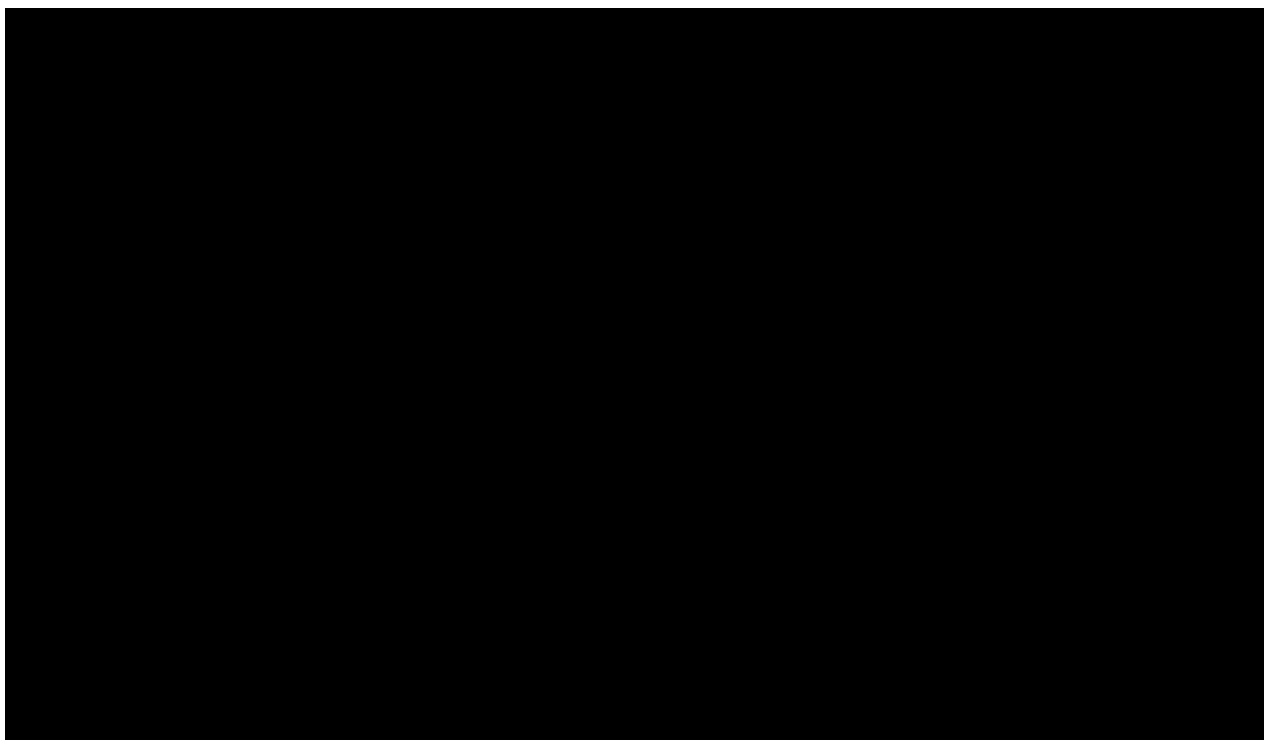
1 harm to AEP.

2 Q. Do you know roughly when the pause occurred?

3 A. Again, I noted on footnote 226 that I -- that
4 the deposition of -- of an individual, Mr. Yende from
5 AEP, speaks to that issue. I don't have that memorized,
6 as I sit here today.

7 Q. You're aware that Lucasys is currently engaged
8 providing tax services to AEP?

9 A. That's my understanding.



20 A. I don't understand your question. I certainly
21 looked at AEP and recall seeing information about the
22 revenue that -- that Lucasys has received from AEP, but
23 there was -- there was still a pause, which indicates
24 harm to AEP.

25 Q. And how did you quantify the harm from a pause?

1 A. I haven't specifically calculated a dollar
2 amount, if that's what you mean by quantification of
3 harm, but just because there's no dollar amount
4 associated with a particular harm does not mean that
5 it's not a harm.

6 Q. So Liberty, third bullet point down. You say,
7 "Lucasys was engaged by Liberty to provide tax and fixed
8 asset advisory services." Can we agree that the project
9 that Liberty was actually -- the specific engagement of
10 Liberty was actually provide internal support to Liberty
11 in implementing PowerPlan products?

12 A. I'm sorry, could you say that again? Could you
13 say the question again?

14 Q. Yes. Can we agree that the specific engagement
15 to Liberty related to providing internal support in
16 implementing PowerPlan products?

17 A. That sounds correct, but I don't have memorized
18 where that particular language appears.

19 Q. And does implementation of PowerTax at a new
20 company, does that fall within the tax services market
21 or is that something else?

22 A. My understanding is that it was because of some
23 of the deficiencies and limitations of PowerTax that
24 Liberty required the assistance of Lucasys, which would
25 put it into the tax services.

1 Q. So your position is -- and it's your
2 understanding in this case is that to implement new
3 software, that's one of the limitations of the PowerPlan
4 software. It's limited in its ability to be
5 implemented?

6 A. My understanding is that -- my recollection of
7 my understanding is that necessity of Liberty to require
8 or to need the assistance of Lucasys in the
9 implementation is consistent with the limitations of the
10 PowerTax system.

11 Q. So do you believe that the PowerTax system
12 should be implementing itself?

13 A. I don't have an opinion on that.

14 Q. So when I say -- when I ask you a question
15 about implementation, what's your understanding of what
16 implementation entails?

17 A. My understanding of implementation is taking
18 the software and making it usable for the customer in
19 whatever ways that the customer requires in that
20 software.

21 Q. Okay. How -- in what way -- when you're
22 installing a new software and it's beginning to be used
23 by customers, in what way is Power Tax limited?

24 A. My understanding is that some of the features
25 and functionality of PowerTax was -- I think it was

1 described by some customers as clunky and required
2 additional steps to be used, and that would be -- could
3 be in the ongoing process or could be in the
4 implementation process.

5 Q. And I'm asking specifically about in
6 implementation. What are these -- what are these
7 functions that are absent you were talking about?

8 A. One that comes to mind is certain reports, to
9 run certain reports. There's certain cutting and
10 pasting that's needed that's cumbersome. That would be
11 one example. I can't recall specifically for the
12 Liberty what the -- what the specific services were in
13 terms of implementation.

14 Q. And so your view is that reporting
15 functionality is -- is something that comes up in
16 implementation of the software?

17 A. Again, I'm not a software expert in terms of
18 the technical side of software, so I don't have an
19 opinion on that.

20 Q. Okay.

21 A. You asked me for some examples of limitations.

22 Q. I'm trying to understand. When you tell me
23 that aspects of implementation are limitations, which is
24 a term you use in your report and it's how you defined
25 your tax services market. I'm trying to understand what

1 falls into it and what doesn't. So I think -- is there
2 anything about the software implementation that is also
3 implementation, in your view? Or if you haven't looked
4 into it, you can say too. I'm not interested in going
5 into the granular detail if it's not necessary.

6 A. Again, as I said before, I'm not a technical
7 expert on the software. So I have a general
8 understanding of the limitations, but not specific as it
9 refers to interaction with implementation.

10 Q. But you felt like you knew enough about it to
11 be able to define a market around the PowerTax -- the
12 alleged PowerTax limitations?

13 A. My understanding and observation from Lucasys
14 by way of example and other companies in that space is
15 that there are limitations to the software and that
16 customers will and have spent money in order to obtain
17 consulting services, and for example, approve Lucasys in
18 order to overcome those limitations.

19 Q. Well, there are lots of other environments in
20 which -- there are lots of other environments where
21 consultants are required to move data within an ERP
22 system, for example, true?

23 MR. CIESLAK: Objection. Lacks foundation.

24 THE WITNESS: Again, I'm not a technical
25 software expert with regards to ERP systems.

1 Q. (By Mr. Fazio) So if an accountant comes into
2 -- comes into a company and is accessing the accounting
3 system and needs to do anything in the accounting
4 systems, is that a -- is that a -- it's a service in
5 support of a limitation of the accounting system or is
6 that something didn't?

7 A. I don't have an opinion on that.

8 THE VIDEOGRAPHER: Can I change the tapes?

9 MR. FAZIO: Yes.

10 THE VIDEOGRAPHER: Okay. Off the record at
11 2:31 p.m., and we can go right back on if you all are
12 ready.

13 MR. CIESLAK: Yes.

14 THE VIDEOGRAPHER: This begins media unit
15 number three, and we're back on the record at 2:31 p.m.

16 Q. (By Mr. Fazio) All right. Let's skip down to
17 Suez, your last bullet point. You note here that
18 PowerPlan raised concerns about Lucasys' access to
19 PowerPlan's software in May or June of 2020?

20 A. Yes.

21 Q. Do you know the specific product -- the
22 specific projects that Lucasys was engaged by Suez to
23 provide services for?

24 A. Not that I can recall.

25 Q. And so did you do anything to confirm that the

1 services were related to PowerTax?

2 A. My recollection was that I had an understanding
3 that they were, but not that I can specifically recall.

4 Q. If the services were not related to PowerTax,
5 would they fall into your tax services market?

6 A. If they were not related to PowerTax, then they
7 would not, no.

8 Q. I think we touched on this earlier, but you
9 understand Suez decided to continue working with
10 Lucasys, true?

11 A. That's my understanding.

12 Q. You say here -- you quote a project manager.
13 You say, "Suez ultimately decided to continue its
14 engagement with Lucasys, though an extern project
15 manager at Suez noted in internal communications that,
16 quote, "I'm very surprised that he decided on Lucasys
17 because of the legal issue. I thought all along," and
18 then you have in brackets, "Michael Salas, Suez chief
19 information officer and the person responsible for
20 deciding how to respond to PowerPlan bracket was going
21 to say we had to work with PP." What is -- why is
22 that -- why did you include that quote in the bullet?

23 A. I included that quote because that refers to
24 the risk I was talking about before and the fact that
25 Suez has through this quote indicated that -- that at

1 least Michael Salas, who is his CIO -- well, this
2 individual thought that -- that Suez's CIO was going to
3 indicate that they had to work with PowerPlan because of
4 a legal issue and so indicating -- although they ended
5 up deciding on Lucasys. So it's the connection between
6 the risks associated with legal issues and choice of
7 supplier.

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13 Q. Now, you talk -- you were talking a moment ago
14 about the risk that -- this quote, unquote, "legal issue
15 presented." Did you review the -- the deposition,
16 30(b)(6) deposition, the corporate representative
17 deposition of Suez?

18 A. I don't -- let me just see if I -- I don't know
19 if Mr. Brockway was the corporate representative to
20 which you're referring.

21 Q. Yes, it was.

22 A. And whether the specific deposition to which
23 you're referring, but that's the deposition with regard
24 to Suez that I recall.

25 Q. Did you note when you read that deposition that

1 Suez's cooperate representative testified in response
2 actually to a question from Lucasys' counsel that none
3 of the communications from PowerPlan had resulted in
4 Lucasys losing out on future opportunities with Suez?
5 Do you recall seeing that testimony?

6 A. Again, I don't have these depositions committed
7 to memory, but I certainly understand that Lucasys
8 continued to work with Suez.

9 Q. Well, if the cooperate representative, in fact,
10 offered that testimony, doesn't that directly contradict
11 the risk issue that you're highlighting in this bullet
12 point?

13 A. I disagree.

14 Q. Okay. Why?

15 A. Because risk is a cost to a company. It's
16 having to incur certain risks because of certain
17 behavior, regardless of whether or not it decided to
18 proceed or not. In fact, it decided that Lucasys was
19 the better option to proceed despite the risk, but that
20 meant that it -- it was, as a result of that decision,
21 forced to incur that risk.

22 Q. Okay.

23 A. Which it otherwise wouldn't have incurred had
24 the competitive behavior had not occurred.

25 Q. All right. I think we talked about this

1 specifically with Suez, but just so we can cover it all
2 at once. Are you aware of any situation in which
3 PowerPlan has brought legal action against any customer
4 over access to its software by Lucasys?

5 MR. CIESLAK: Objection. Asked and
6 answered.

7 THE WITNESS: Again, I answered this
8 earlier in the deposition. I'm aware of legal action
9 that PowerPlan brought against Lucasys, which certainly
10 could have an impact on customers, directly and
11 indirectly. I'm not aware of any legal action that
12 PowerPlan has brought against customers.

13 Q. (By Mr. Fazio) So --

14 A. We've been going about an hour. I don't know
15 when a good time is to take a break.

16 Q. If you need a break, I'm happy to take one.

17 A. That would be great.

18 Q. That's fine.

19 THE VIDEOGRAPHER: Off the record at
20 2:38 p.m.

21 (Off the record.)

22 THE VIDEOGRAPHER: All right. Just a
23 moment. Back on the report at 2:47 p.m.

24 Q. (By Mr. Fazio) All right. Dr. Meyer, let's
25 talk about your comments beginning at paragraph 93 where

1 you're talking about the 2020 IP protection customer
2 communications. Do you see that?

3 A. Yes.

4 Q. Okay. Now, you state here that PowerPlan sent
5 out letters to 40 or 50 customers over a period of time,
6 true?

7 A. That's my understanding, yes.

8 Q. Did you communicate with any recipient of an IP
9 protection letter?

10 A. Personally, I did not.

11 Q. Did anybody from New York communicate with a
12 recipient of an IP protection letter?

13 A. No, not to the best of my knowledge.

14 Q. Are you aware of anybody else who communicated
15 with a recipient of an IP protection letter where you've
16 gotten feedback from the recipient on it?

17 A. Not to the best of my recollection.

18 Q. Did you do anything to determine whether any
19 recipient of an IP protection letter were considering
20 either the purchase of tax services or tax software at
21 the time you received the letter?

22 A. Not specifically, no.

23 Q. Did you do something generally?

24 A. Certainly the letter and specifically the --
25 the language that I have pulled out talks about Lucasys

1 specifically, so specifically alerting customers or
2 potential customers to Lucasys, but other than that, no.

3 Q. Did you do anything to determine whether an IP
4 protection letter influenced any recipient's decision to
5 engage with Lucasys?

6 A. Again, specific to any particular customer, no.

7 Q. Can you identify any customer that did not do
8 business with Lucasys as a result of receiving an IT
9 protection letter?

10 A. Specifically, no.

11 Q. Now, you cite to two paragraph from a letter
12 here, but to be clear, there's another paragraph in that
13 letter that says PowerPlan's consent was not required to
14 engage Lucasys to the extent they was doing things that
15 did not involve access to the PowerPlan software. Do
16 you remember that?

17 A. I recall that this is just an excerpt from the
18 letter, yes.

19 Q. Do you remember the text that I'm talking
20 about?

21 A. Again, you keep asking me about things --
22 whether I committed things to memory without showing me
23 documents, and no, I have not committed the document to
24 memory.

25 Q. I'll show you.

1 (Exhibit 2 marked for identification.)

2 Q. (By Mr. Fazio) Here you go, doctor.

3 A. (Witness examining document.)

4 Q. Now, doctor, I want to direct your attention to
5 what's been marked as Exhibit 2. Okay. And if you look
6 at your last sentence of paragraph 93, you say, "The
7 image below is from the document that appears to be the
8 template from those communications." Do you see that?

9 A. Yes.

10 Q. And then you have a footnote 237, and footnote
11 237 refers to Exhibit 17 from the deposition of Brett
12 Bertz. And do you see the Brett Bertz Exhibit 17
13 sticker on --

14 A. I do.

15 Q. -- Exhibit 2?

16 A. Yes.

17 Q. Now, can you just take a look at Bertz 17, your
18 Exhibit 2, and if you could just compare the two
19 paragraphs that you have excerpted and put into your
20 report with the second and third paragraphs of this
21 letter template.

22 A. (Witness examining document.)

23 Q. All set?

24 A. Yes.

25 Q. Okay. And so are these the two -- paragraphs

1 two and three from Exhibit 2, are these the paragraphs
2 that you excerpted into your report?

3 A. Yes. That's correct.

4 Q. Okay. Now, there's a paragraph that follows
5 that paragraph, the fourth paragraph on first
6 Exhibit 17. Do you see that?

7 A. I do.

8 Q. The one that says, "PowerPlan's consent is not
9 required for customers to retain Lucasys for projects
10 that will not involve access to, disclosure of, or
11 working with PowerPlan software, or other confidential
12 information." Do you see that?

13 A. Yes.

14 Q. Okay. Is there a reason you didn't include
15 this paragraph excerpted into your report?

16 A. There are also other paragraphs that I did not
17 include either. I simply included these two paragraphs
18 that talk about -- and it specifically says it's from
19 the document that talk about the limitations and the
20 assertions of intellectual property.

21 Q. Okay. Let's talk about that for a second.
22 Where is -- when you say, "insertion of intellectual
23 property," what are you referring to?

24 A. (Witness examining document.) I'm referring to
25 the specific use of the term "intellectual property" as

1 used by PowerPlan.

2 Q. Okay. And where specifically are you doing
3 that? Where does that language come up?

4 A. It comes up in both paragraphs. It comes up in
5 the first paragraph and including trade secrets, which I
6 understand to be one form of intellectual property, and
7 then it comes up in the second paragraph as well.

8 Q. And do you think it's relevant that in the same
9 letter in the paragraph immediately following the two
10 that you cite, PowerPlan was making it clear that it had
11 -- did not need -- no PowerPlan customer needed
12 PowerPlan's consent to use Lucasys if they were doing
13 work that did not involve access to PowerPlan's
14 software?

15 A. (Witness examining document.)

16 No, I don't think that's particularly
17 relevant.

18 Q. Why is that?

19 A. Because, as I stated, the communications
20 specifically spoke about the concerns that were -- and
21 the -- the alerting of customers to protect -- to
22 potential risks associated with using Lucasys, and those
23 are indicated in these two particular paragraphs. There
24 are also other place certainly in the final points.
25 There's again mention of contacting PowerPlan. So there

1 certainly is additional information throughout the
2 letter, and I -- I cite to the entirety of the letter.
3 These just happen to be two paragraphs that specifically
4 deal with that risk.

5 Q. Have you made any determination in your work in
6 this case whether the license agreements that PowerPlan
7 has with its customers require consent before someone
8 gives access to the PowerPlan software to a third party?

9 A. (Witness examining document.) I certainly
10 recall seeing information. There's information later on
11 in this letter about confidential information and the --
12 and the license agreement.

13 Q. So is it your position that when PowerPlant
14 sent these letters -- well, I don't know. Maybe I don't
15 know if you've formed an opinion. Have you formed an
16 opinion on this letter as to whether or not it
17 accurately portrays rights and customer obligations
18 under the license? Is that an opinion you intend to
19 given this case?

20 A. That is not an opinion. I'm not a -- I'm not a
21 lawyer or legal expert. That's not an opinion that I
22 intend to give or that I'm qualified to give in this
23 case.

24 Q. Now, in paragraph 95, you state that Mr. Bertz
25 testified that he had no evidence that Lucasys had

1 misappropriated PowerPlan's confidential information and
2 trade secrets at the time PowerPlan sent the letter or
3 the correspondence described above. Do you see that?

4 MR. CIESLAK: Just to be clear, we're back
5 on Dr. Meyer's report?

6 MR. FAZIO: Yes. Sorry.

7 MR. CIESLAK: Just keeping a clear record.

8 THE WITNESS: Yes. I believe you either
9 read or paraphrased that sentence correctly.

10 Q. (By Mr. Fazio) Okay. Do you know whether
11 Mr. Bertz was among the people that were charged with
12 evaluating whether or not in was a risk to PowerPlan's
13 intellectual property as a result of Lucasys' access to
14 PowerPlan's software?

15 A. Again, I have -- I don't have Mr. Bertz's
16 deposition or the other deposition committed to memory.
17 I don't recall one way or the other.

18 Q. Well, if Mr. Bertz was in a position to know,
19 would you have cited him here?

20 A. Well, Mr. Bertz was testifying about the letter
21 itself. He seemed to be the individual knowledgeable
22 about the contact of customers by PowerPlan. So to that
23 end, the information that he -- what he knew or didn't
24 know about Lucasys' actions would be relevant with
25 regards to him sending or knowing about sending of the

1 letters.

2 Q. Flip over to paragraph 96.

3 A. (Witness complying.)

4 Q. It's your report. Page 48. There you say --
5 you cite Mr. Chang for the proposition that Lucasys has
6 lost a lot of business due to the reputation damage from
7 PowerPlan's alleged interference. Can you tell me what
8 have you done to corroborate Mr. Chang's testimony?

9 A. As I stated before, the -- there's evidence
10 obviously from the four particular customers that we
11 spoke earlier that had already engaged or at least been
12 in discussions with Lucasys about an engagement.
13 However, the other customers who never engaged Lucasys,
14 I can observe, as an economist, with regards to a
15 reduction or a change in that level of engagement, but
16 individuals like Mr. Chang in the marketplace would have
17 their opinions, as he did, about the effect of those
18 letters.

19 Q. So would it be fair to say that you as an
20 economist, you're not offering an opinion in this case
21 that Lucasys' business reputation was, in fact, damaged
22 by PowerPlan's conduct?

23 A. Again, because of the period of time during
24 which the letters were sent before Lucasys had a chance
25 to really establish itself in the market, it's not

1 possible for me as an economist to -- to observe that
2 reputation damage directly in customers that hadn't yet
3 engaged Lucasys, although we can certainly see it in
4 customers that had, but Mr. Chang being in the market
5 would have a sense of the reputation of Lucasys.

6 Q. So for this particular point, you're relying on
7 Mr. Chang exclusively; is that fair?

8 A. For Mr. Chang's testimony, I'm relying on Mr.
9 Chang, yes.

10 Q. Okay. In term of this broader point about
11 damage to reputation, is there other evidence that you
12 know of or that you could would cite to at trial about
13 reputational damage to Lucasys' business reputation?

14 A. Again, the totality of my report speaks to a
15 lot of issues that are relevant to this question,
16 including PowerPlan's own -- I believe there was a quote
17 that, for example, Lucasys' oxygen is gone and other
18 such statements, and additionally, Lucasys' other
19 statements about difficulties in light of this ant
20 competitive conduct, but specifically, I can't recall,
21 as I sit here today, another -- there may be and it may
22 be elsewhere in my report. I just can't recall, as I
23 sit here today, another instance of the use of the word
24 "reputation damage" specifically.

25 Q. In terms of your -- you were very clear earlier

1 about the four customers that are identified your
2 report, but I just want to make sure clear on --
3 collaboratively. Do you agree that there is no record
4 or evidence in this case that any of the 40 to 50
5 customers that received an IP protection letter from
6 PowerPlan elected not to work with Lucasys because of
7 that letter?

8 MR. CIESLAK: Objection. Calls for
9 speculation.

10 THE WITNESS: (Witness examining document.)
11 Again, I can't recall, as I sit here today, a particular
12 -- a customer that would fall into that category, as I
13 sit here today.

14 Q. (By Mr. Fazio) So the next section in your
15 report, you talk about -- you say, quote, "PowerPlan has
16 misappropriated confidential and proprietary information
17 and trade secret in PowerPlan." Section 3 starts at
18 paragraph 97. Are you with me?

19 A. Yes.

20 Q. Now, I wanted to direct your attention to
21 paragraph 101, which is the concluding paragraph of this
22 section. The last sentence, you say, "Accordingly, it
23 is economically reasonable to assume that prior to their
24 dismissal, the counterclaims of PowerPlan against
25 Lucasys had a dampening effect on competition." Do you

1 see that?

2 A. I apologize. I do not. I didn't catch where
3 you were starting.

4 Q. I'm sorry. Last -- it's paragraph 101, last
5 sentence.

6 A. (Witness examining document.) Last sentence,
7 yes. I'm sorry.

8 Q. Okay. Are you with me?

9 A. I am.

10 Q. Okay. I just want to ask you, are you aware of
11 any testimony from any customer or potential customer in
12 the alleged tax software market indicating that it would
13 not work with Lucasys because of PowerPlan's
14 counterclaims?

15 A. Again, as I have indicated before, we have a
16 number of customers where there's specific information
17 about a change in the business relationship. In at
18 least one of those cases, legal risk specifically was
19 discussed. Whether that was specific to the lawsuit
20 itself or the letter, it wasn't clear from that
21 statement, and likewise about the customers who received
22 the letter, but in terms of as a matter of economics,
23 the presence of a lawsuit certainly increases risk of a
24 customer working with -- with Lucasys, which would tend
25 to have a dampening effect on competition.

1 Q. So my question was simple. I'm just asking you
2 if you were aware of any testimony from any customer or
3 any potential customer in the alleged tax software
4 market or in the tax software market indicating it would
5 not work at Lucasys because of PowerPlan's
6 counterclaims. I understand your broader point about
7 risk. I'm asking you that specific question. Are you
8 aware of any testimony?

9 A. Specifically with regards to any particular
10 customer, no.

11 Q. Can you point me to any document in which any
12 customer, potential customer, in the alleged tax
13 software market indicated it would not work with Lucasys
14 because of PowerPlan's counterclaims?

15 A. Again, specific to a particular customer and
16 specific to the counterclaims as distinct from the more
17 general combination of anticompetitive behavior, no, I
18 can't isolate that.

19 Q. Can you point me to any evidence that any
20 customer or potential customer in the alleged tax
21 services market indicated that it would not work with
22 Lucasys because of PowerPlan's counterclaims?

23 A. And again, as I stated before, we certainly
24 have -- we have a number of customers specifically
25 changing their business relationship with Lucasys and

1 customers receiving several pieces of information, the
2 letter being one, regarding potential risk associated
3 with Lucasys, but if you're asking me specifically to
4 isolate the counterclaims and the effect of that
5 specifically on a specific customer in isolation, no, I
6 can't do that.

7 Q. Do you understand that Lucasys actually filed
8 suit against PowerPlan in July 2020?

9 A. My recollection, I don't recall the exact date
10 of the original complaint, but that sounds about with
11 what I recall.

12 Q. Right. Well, you're aware -- let's simplify it
13 a little bit. You're aware that Lucasys originally
14 brought the claim against PowerPlan, fair?

15 A. That's my understanding, yes.

16 Q. And in forming your opinions in this case, did
17 you consider what impact Lucasys' filing of the suit
18 against PowerPlan may have had on Lucasys' ability to
19 compete in the tax software market?

20 A. Not specifically, no.

21 Q. And you're aware that PowerPlan's answer and
22 counterclaim wasn't filed in 2021, October 2021?

23 A. Again, I don't have those dates memorized.

24 Q. Let's again simplify it. Is it fair to say
25 that prior to the filing of the counterclaims, there

1 couldn't have been any representation damage to Lucasys
2 associated with the counterclaims?

3 A. I certainly agree that there wouldn't be
4 specific harm associated with the filing of the
5 counterclaims, but again, the letters and any other
6 communication with PowerPlan that either alluded to
7 legal risk or another -- in any other way suggested
8 legal risk. Whether or not it was the actual filing of
9 the counterclaims or not certainly could have that
10 dampening effect, but in terms of the dampening effect
11 of the counterclaim, other than specific communication
12 about an intention to file a counterclaim, that would
13 come from the filing of the counterclaim.

14 Q. So I asked you a minute ago about the potential
15 impact of Lucasys filing lawsuit against PowerPlan, and
16 you told me that you didn't specifically look into that.
17 Is the filing of the complaint by Lucasys in which they
18 at least raised a discussion about trade secrets in the
19 complaint, would that have the bearing on the risk that
20 an IOU may face when they're deciding whether or not to
21 use Lucasys?

22 MR. CIESLAK: Objection. Misstates
23 testimony.

24 THE WITNESS: I'm sorry. Now that I'm
25 trying to answer your question, I just want to make sure

1 that I heard it correctly. Could you repeat the
2 question?

3 (Whereupon, the question was read back on
4 the record.)

5 THE WITNESS: I'm not quite sure I
6 understand that question.

7 MY. FAZIO: That was the question
8 equivalent to a toddler running downhill.

9 Q. (By Mr. Fazio) The filing of the complaint
10 itself, did that have any bearing on the risks that IOUs
11 would have faced in determining whether they wanted to
12 use Lucasys or some other vendor for tax services or tax
13 software?

14 A. I don't -- I don't believe that that would have
15 increased the risk above and beyond the risk that the
16 companies were facing.

17 Q. Well, at that point in time prior to the filing
18 of the complaint, what were the risks that the companies
19 were facing?

20 A. Well, prior to the filing of the complaint,
21 they would have been the risks that were being -- were,
22 in fact, discussed in the complaint, such as the
23 letters. So those were already -- had already been
24 sent, and my understanding is that -- well, and the
25 filing of the lawsuit would indicate at least an attempt

1 by Lucasys to push back against that risk.

2 Q. So beyond the 40 or 50 recipients of the IP
3 protection letters, are you aware of any other IOUs that
4 were either -- they received a copy of those letters or
5 knew of those letters by any specific IOUs who was not
6 necessary a recipient, but knew of them?

7 A. I don't recall seeing information about that
8 one way or the other.

9 Q. So you said earlier you're not a lawyer. Great
10 judgment on your part. So I assume you have no opinion
11 as to whether or not PowerPlan was obligated to file its
12 counterclaim or risk waiving them?

13 A. Again, I'm not a legal expert. I don't have an
14 opinion on that knowledge, no.

15 Q. We're you provided any information concerning
16 the pre-litigation exchange of information where Lucasys
17 disclosed certain proprietary information to PowerPlan's
18 former counsel?

19 MR. CIESLAK: Objection. Lacks foundation.

20 THE WITNESS: I don't recall any such
21 documentation that I reviewed, not as I sit here today.

22 Q. (By Mr. Fazio) Are you aware that -- that
23 generally that that process occurred?

24 A. I don't have a recollection one way or the
25 other. Nothing comes to mind, as I sit here today.

1 Q. Now, I'll represent to you that the
2 counterclaims were pending for about seven months, and I
3 think you know they were dismissed. So you know they
4 were dismissed, true?

5 A. Yes.

6 Q. Okay. And so I'll represent to you that it was
7 about seven months later. What, if anything, do you do
8 to test your assumption that competition was dampened
9 during the period the counterclaims were pending?

10 A. Again, given all of the anticompetitive
11 behavior by PowerPlan, it wasn't possible to isolate the
12 specific effect of the counterclaims at a particular
13 point in time. I just note, as I have noted in my
14 report, the uncertainty and the dampening effect as a
15 matter of economics that the threat of intellectual
16 property litigation would tend to have on customers.

17 Q. In the year since the counterclaim has been
18 dismissed, has Lucasys sold any software in the tax
19 software market?

20 A. Again, I don't think it's been quite a year. I
21 think it was May. I think it was May again, but --

22 Q. Fair --

23 A. -- but not to my understanding.

24 Q. So let's assume that the only issue in the case
25 that Lucasys was concerned about were the counterclaims,

1 and there was nothing prior to that. Would you have
2 been able to measure the dampening effect if that was
3 the only conduct that Lucasys was complaining about?

4 MR. CIESLAK: Objection. Incomplete
5 hypothetical.

6 THE WITNESS: I can't answer that. That's
7 not what I understood -- that's not what I understand
8 the claims to be or the circumstances to be, so I might
9 or I might not, depending on the circumstances.

10 Q. (By Mr. Fazio) So just -- are there
11 circumstances that you would need to understand beyond
12 only the counterclaims -- the only issue that was being
13 complained about were the counterclaims and the other
14 issues had never happened? I'm trying to understand
15 what your method would be to measure this dampening
16 effect. How would you go about doing that? Whether or
17 not you could do it in this case because these were the
18 things -- set that aside for a moment. What would the
19 method be for you to determine the dampening effect that
20 you refer to in your report?

21 A. Well, it would be to look at all the evidence
22 in the case, but whether or not that would be possible
23 to ascertain the damning effect, I don't know because we
24 do actually have these other factors that are happening
25 at the same time.

1 Q. Paragraph 102, you talk about authorized vendor
2 agreement. Do you see that?

3 A. Yes.

4 Q. Okay. And you say, second sentence there, "I
5 understand that Lucasys' believes that the scope of the
6 AVA is overly restricted of that is in attempting to
7 deny Lucasys' right and information that is not
8 exclusive to PowerPlan and enable PowerPlan to impose
9 burdensome and costly audits on Lucasys." Do you see
10 that?

11 A. Yes.

12 Q. Independent of what Lucasys may have told you,
13 have you done anything to analyze the authorized vendor
14 agreements that PowerPlan has with certain service
15 providers?

16 A. (Witness examining document.) Again, I note
17 the specific sources for both in terms of Lucasys itself
18 and also RCC and its opinions about the restrictive
19 nature, but other -- and my economic analysis of the
20 potential for such agreements to raise the cost of
21 becoming -- of being a service provider under such an
22 agreement. Those were the things I've done in addition
23 obviously to everything this in report as a backdrop.

24 Q. Have you read the authorized vendor agreement
25 that was proposed to Lucasys?

1 A. My recollection is I've seen an authorized
2 agreement. Whether or not it was for Lucasys, I just
3 can sit here and recall, as I sit here today.

4 Q. Have you done anything independently evaluate
5 the impact that the proposed AVAs had on competition in
6 the tax services market?

7 A. Again, in isolation, the AVAs are -- in this
8 particular situation, are a part of the entirety of
9 the -- of the set of anticompetitive behaviors. I
10 haven't sought to isolate their impact separately.

11 Q. Have you done anything to compare the
12 authorized vendor agreements that PowerPlan entered into
13 with third-party providers to any kind of industry
14 standard or comparable AVAs that existed in other
15 software markets?

16 A. No.

17 Q. Do you have understanding as to whether or not
18 the AVAs allowed certain third-party vendors into
19 PowerPlan's cloud environment? Do you know if that's
20 true or not?

21 A. I don't recall, as I sit here today.

22 Q. So with respect to access to the cloud -- to
23 PowerPlan's cloud environment, if prior to the AVA third
24 parties were not permitted access at all to provide
25 services, and after the AVA, they were able to provide

1 services, can we agree that would actually be
2 procompetitive with respect to the tax services market?

3 MR. CIESLAK: Objection. Incomplete
4 hypothetical.

5 THE WITNESS: I can't answer that one way
6 or the other.

7 Q. (By Mr. Fazio) Well, we certainly increase
8 choose. Can we agree to that?

9 MR. CIESLAK: Objection. Incomplete
10 hypothetical.

11 THE WITNESS: Again, that would depend on
12 the totality of the agreement and the implications in
13 the specific way that you're discussing, and I just
14 don't recall that, as I sit here today.

15 Q. (By Mr. Fazio) Can you point to any evidence
16 that an AVA actually raised this tax service market
17 participant's cost?

18 A. Insofar as there's discussion of audits that
19 are burdensome that would increase cost, insofar as it
20 limited a provider's ability to provide a full range of
21 products and services that would raise -- that could
22 raise their costs of operation.

23 Q. Do you have any -- can you point to any
24 evidence or record in the case of either of those things
25 actually occurring?

1 A. I can't recall specific evidence of an audit
2 occurring, not to the best of my recollection.

3 Q. In terms of PowerPlan, is it your view that
4 there are no legitimate restrictions they can impose on
5 customers and the customer's use of third-party
6 consultants?

7 A. I am not a legal expert. I don't have an
8 opinion as to that question.

9 Q. And do you have -- do you degree that
10 protecting a firm's intellectual property is reasonable?

11 A. I don't understand what you mean by that
12 question.

13 Q. Well, is it reasonable -- if you have
14 intellectual property, is it reasonable to take steps to
15 protect it?

16 A. Again, I don't know what you mean by
17 "reasonable" in that context.

18 Q. Okay. Well, can we agree that intellectual
19 property protection are procompetitive in the sense that
20 they would provide an incentive for investment?

21 MR. CIESLAK: Objection. Incomplete
22 hypothetical.

23 THE WITNESS: I understand in this case
24 there's a disagreement about whether there is
25 intellectual property to be protected. As a matter --

1 as a more general matter, even in situations where there
2 is intellectual property to be protected, there's also a
3 balance between the -- any potential procompetitive
4 effects of protecting that intellectual property and
5 anticompetitive effects of an exclusion related to that
6 protection.

7 Q. (By Mr. Fazio) Okay. You mentioned the
8 dispute over trade secrets in this case. That's not
9 something you're going to offer an opinion on in the
10 trial of this case whether PowerPlan had or didn't have
11 particular trade secrets?

12 A. I'm not a legal expert. That's not part of my
13 opinion, no.

14 Q. You're aware that Lucasys has never actually
15 signed or agreed to the AVA that was proposed to it,
16 correct?

17 A. That's my understanding.

18 Q. So in this case, Lucasys was never -- they were
19 never bound by the AVA, true?

20 A. Again, I'm not a legal expert. I certainly --
21 I would assume that if you haven't signed something,
22 you're not bound by it, but I'm not a legal expert, so I
23 won't offer an opinion on that.

24 Q. All right. So at least with respect to Lucasys
25 as a -- as a firm that did not enter into an AVA, the

1 AVA itself couldn't have impeded Lucasys in any way. If
2 it's not bound by it, can't impede them; is that fair?

3 MR. CIESLAK: Objection. Vague.

4 THE WITNESS: Well, I would disagree.

5 Q. (By Mr. Fazio) Okay. Tell me why.

6 A. Well, to the extent that failing to agree to
7 sign an agreement that Lucasys feels is overly
8 burdensome results in Lucasys not being considered an
9 authorization vendor, certainly to the extent --
10 particularly in light of a tax services market linked to
11 the limitations of the PowerTax software would certainly
12 not be beneficial to Lucasys.

13 MR. FAZIO: Take ten minutes.

14 MR. CIESLAK: Okay.

15 THE VIDEOGRAPHER: Off the record at
16 3:30 p.m.

17 (Off the record.)

18 THE VIDEOGRAPHER: All right. Just a
19 moment. Back on the record at 3:41 p.m.

20 Q. (By Mr. Fazio) Dr. Meyer, you mentioned
21 earlier that you had reviewed Dr. Tyler's report?

22 A. Yes.

23 Q. Okay. After reviewing his report, was there --
24 are there any opinions or conclusions that you reached
25 in your report that you've changed?

1 A. No.

2 Q. Do you have any specific criticisms of Dr.
3 Tyler's report?

4 A. I reviewed the portions of his report related
5 to my -- my report, and I disagree with his critiques of
6 my report, but I don't have specific criticisms above
7 and beyond that.

8 Q. Well, in what sense do you disagree with his
9 critiques of your report?

10 A. Well, I believe that he mischaracterizes my
11 report in a number of different places. Flatly
12 incorrectly asserts certain statements to me or ascribes
13 them to my report and opinions, which are not true. He
14 incorrectly characterizes my opinion and things of that
15 nature.

16 Q. Okay.

17 A. I don't have a complete list of those
18 disagreements at my fingertips.

19 Q. Well, can you give me a couple of examples?

20 A. Again, there were -- there were instances in
21 which I recall him essentially saying that I didn't, you
22 know, look at a certain type of analysis or didn't --
23 something to that nature or came to a certain
24 conclusion. He claims that I came to a certain
25 conclusion which I didn't come to. Again, I don't have

1 those committed memory.

2 Q. Your report, you got -- in your Exhibit 1, you
3 got as a profile/CV, which if you go to page -- it's
4 unnumbered, but it would be Page 52.

5 A. Yes.

6 Q. Okay. Second paragraph of the profile, you
7 were described as somebody who analyzes damages and
8 provide expert testimony concerning issues arising
9 patent trademark, copyright infringement,
10 misappropriation of trade secrets, breach of contract,
11 analyze lost profits, so forth, and so on. Did you
12 consider offering a damages opinion in this case?

13 A. I was not asked to provide a damages opinion in
14 this case.

15 Q. Okay. And have you -- did you do anything to
16 support Dr. -- or Mr. Olson in preparing his damages
17 opinion in the case?

18 A. I did not.

19 Q. In terms of your -- your work at NERA, what
20 percentage of your work is litigation related?

21 A. That really depends on -- as to the time
22 period.

23 Q. Yes.

24 A. I would estimate that over the last several
25 years, that could range from 40 percent or so to about

1 maybe 70, 75 percent, depending on the particular time
2 period involved.

3 Q. And when you're not working on litigation type
4 engagements, what sort of work do you do?

5 A. I have a number of different roles at the firm.
6 I'm chair of the intellectual property practice and a
7 member of the board of directors. So there's -- and a
8 managing director of my own team for human resources
9 purposes. So there's another of tasks that fall into
10 that category -- all of those categories. And then
11 additionally, I do consuming work related to economics
12 in a number of different areas, which are not litigation
13 related as well.

14 Q. Your -- if you flip over to Page 3 of your CV,
15 there's a section that starts "testimony and expert
16 reports," and I'm assuming these are just for the last
17 four years?

18 A. Yes. That's correct.

19 Q. Okay. And of this list, are there any case you
20 think are particularly similar to this case?

21 A. (Witness examining document.) I'm not sure
22 what you mean by "particularly similar."

23 Q. Any of these involve potential market entrance,
24 coming into a market?

25 A. Certainly a number of these would involve

1 potential market entrance, coming into a market.

2 Q. Okay. Which ones?

3 A. I probably will not -- I will not be able to
4 give you an exhaustive list --

5 Q. Sure.

6 A. -- as we sit here today. The ones that comes
7 to mind are, at a minimum, the Farmobile case, the
8 Danieli case. And I'm looking at Page 4. I would
9 consider the Siemens case to be -- one could
10 characterize that either way as a market entrance case
11 coming into a market. The Guide Tech case could be
12 characterized in that way. The FloodBreak case could be
13 characterized in that way. The PPG case on Page 5 could
14 be characterized in that way. The IN Venture case could
15 be characterized in that way.

16 Q. On Page 6?

17 A. On Page 7. Those are ones, as I sit here
18 today, that can be characterized that way, but there may
19 be others as well. I'm not able to bring to mind all of
20 the issues and all of the cases as, I sit here today.

21 MR. FAZIO: All right. Dr. Meyer, thank
22 you. I don't have any further questions.

23 MR. CIESLAK: Nothing from us.

24 THE VIDEOGRAPHER: All right. This
25 concludes the video recorded deposition. We're off the

1 record at 3:51 p.m.

2 (Off the record.)

3 (The proceeding were concluded at 3:51 p.m.)

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2 CERTIFICATE OF REPORTER
3

4 STATE OF GEORGIA)

5)

6 COUNTY OF DEKALB)
7

8 I, TAMIKA M. BURNETTE, hereby certify
9 that the foregoing proceedings were taken before me at
10 the time and place therein designated; that a review of
11 the transcript was requested, and that the foregoing
12 pages numbered 1 through 177 are a true and correct
13 record of the aforesaid proceedings.

14 I further certify that I am not a relative,
15 employee, attorney or counsel of any of the parties, nor
16 am I a relative or employee of any of the parties'
17 attorneys or counsel connected with the action, nor am I
18 financially interested in the action.
19

20 DATED this 28th day of March, 2023
21

22 
23

24 TAMIKA M. BURNETTE

25 CERTIFIED COURT REPORTER, RPR, CSR-2870

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7 made for the reporting services of the certified court
8 reporter, by the court reporter's employer, or the
9 referral source for the deposition, with any party to
10 the litigation, counsel to the parties or other entity.
11 Such form shall be attached to the deposition
12 transcript." I make the following disclosure:

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Notice Date: 03/28/2023

Deposition Date: 3/15/2023

Deponent: Christine S. Meyer, Ph.D.

Case Name: Lucasys Inc. v. Powerplan, Inc.

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CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me.

Any additions or corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.

Signature of Deponent

I hereby certify that the individual representing himself/herself to be the above-named individual, appeared before me this ____ day of _____, 20__, and executed the above certificate in my presence.

NOTARY PUBLIC IN AND FOR

County Name

MY COMMISSION EXPIRES:

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